

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1   186	
2. CONTRACT (Proc. Inst. Ident.) NO. DACW29-03-D-0009		3. EFFECTIVE DATE 29 Nov 2002		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY USACE, CONTRACTING DIVISION 7400 LEAKE AVE, ATTN: CEVMN-CT, RM 172 NEW ORLEANS LA 70118		CODE DACW29		6. ADMINISTERED BY (If other than Item 5) USACE, CONTRACTING DIVISION P.O. BOX 60267 NEW ORLEANS LA 70160-0267		CODE DACW29	
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, state and zip code) ASHBRITT, INC. HELEN GANNON 1280 SW 36TH AVE, SUITE 102 POMPANO BEACH FL 33069				8. DELIVERY [ ] FOB ORIGIN [X] OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT			
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:		ITEM	
CODE 00Z46		FACILITY CODE					
11. SHIP TO/MARK FOR  <b>See Schedule</b>		CODE		12. PAYMENT WILL BE MADE BY USAED NEW ORLEANS-FINANCE CENTER 5722 INTEGRITY DRIVE MILLINGTON TN 38054-5005			
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [ ] 10 U.S.C. 2304(c)( ) [ ] 41 U.S.C. 253(c)( )		14. ACCOUNTING AND APPROPRIATION DATA					
15A. ITEM NO.	15B. SUPPLIES/ SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
	<b>SEE SCHEDULE</b>						
<b>15G. TOTAL AMOUNT OF CONTRACT</b>						<b>\$30,000,000.00</b>	
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
<b>PART I - THE SCHEDULE</b>				<b>PART II - CONTRACT CLAUSES</b>			
X	A	SOLICITATION/ CONTRACT FORM	1	X	I	CONTRACT CLAUSES	74 - 159
X	B	SUPPLIES OR SERVICES AND PRICES/ COSTS	2 - 16	<b>PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS</b>			
X	C	DESCRIPTION/ SPECS./ WORK STATEMENT	17 - 28	X	J	LIST OF ATTACHMENTS	160 - 186
	D	PACKAGING AND MARKING		<b>PART IV - REPRESENTATIONS AND INSTRUCTIONS</b>			
X	E	INSPECTION AND ACCEPTANCE	29 - 31	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS		
X	F	DELIVERIES OR PERFORMANCE	32 - 34		INSTRS., CONDS., AND NOTICES TO OFFERORS		
X	G	CONTRACT ADMINISTRATION DATA	35	L			
X	H	SPECIAL CONTRACT REQUIREMENTS	36 - 73	M	EVALUATION FACTORS FOR AWARD		
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</b>							
17. [ ] CONTRACTOR'S NEGOTIATED AGREEMENT Contractor is required to sign this document and return copies to issuing office. Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. [X] AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number REF: DACW29-02-R-0002 including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME AND TITLE OF CONTRACTING OFFICER JAMES A BARR / CONTRACTING OFFICER TEL: (504) 862-2881 EMAIL: James.A.Barr@MVN02.usace.army.mil			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)				BY  (Signature of Contracting Officer)		29-Nov-2002	

Section B - Supplies or Services and Prices

AWARD INFORMATION

**This constitutes award of Region 3, only, as defined in Section C of the specifications.**

**Contractor's technical proposal dated May 24, 2002, revised September 5, 2002, revised November 15, 2002 and price proposal dated November 22, 2002 is attached hereto and made a part hereof.**

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0001	PART I: DEBRIS REMOVAL REGION 3 FFP PART II: SITE MANAGEMENT/DEBRIS REDUCTION - PERIOD OF PERFORMANCE: 1 DEC 02 - 30 NOV 03				\$ NTE
				ESTIMATED NET AMT	\$0.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0001AA	PART I: DEBRIS REMOVAL FFP	1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
				ESTIMATED NET AMT	\$15,000,000.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0001AB		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
	PART II: SITE MANAGEMENT/DEBRIS FFP REDUCTION				
				ESTIMATED NET AMT	\$15,000,000.00
	Funded Amount				\$0.00
	FOB: Destination				

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0002 OPTION					\$ NTE
	PART I: DEBRIS REMOVAL REGION 3 FFP PART II: SITE MANAGEMENT/DEBRIS REDUCTION - PERIOD OF PERFORMANCE: 1 DEC 03 - 30 NOV 04				
				ESTIMATED NET AMT	\$0.00
	Funded Amount				\$0.00
	FOB: Destination				

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0002AA		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART I: DEBRIS REMOVAL FFP				
				ESTIMATED NET AMT	\$15,000,000.00
	Funded Amount				\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0002AB		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART II: SITE MANAGEMENT/DEBRIS FFP REDUCTION				
					<hr/>
					ESTIMATED NET AMT \$15,000,000.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0003					\$ NTE
OPTION	PART I: DEBRIS REMOVAL REGION 3 FFP PART II: SITE MANAGEMENT/DEBRIS REDUCTION - PERIOD OF PERFORMANCE: 1 DEC 04 - 30 NOV 05				
					<hr/>
					ESTIMATED NET AMT \$0.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0003AA		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART I: DEBRIS REMOVAL FFP				
					<hr/>
ESTIMATED NET AMT					\$15,000,000.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0003AB		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART II: SITE MANAGEMENT/DEBRIS FFP REDUCTION				
					<hr/>
ESTIMATED NET AMT					\$15,000,000.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0004					\$ NTE
OPTION	PART I: DEBRIS REMOVAL REGION 3 FFP PART II: SITE MANAGEMENT/DEBRIS REDUCTION - PERIOD OF PERFORMANCE: 1 DEC 05 - 30 NOV 06				
					<hr/>
ESTIMATED NET AMT					\$0.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0004AA		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART I: DEBRIS REMOVAL FFP				
					<hr/>
					ESTIMATED NET AMT \$15,000,000.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0004AB		1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
OPTION	PART II: SITE MANAGEMENT/DEBRIS FFP REDUCTION				
					<hr/>
					ESTIMATED NET AMT \$15,000,000.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0005 OPTION	PART I: DEBRIS REMOVAL REGION 3 FFP PART II: SITE MANAGEMENT/DEBRIS REDUCTION - PERIOD OF PERFORMANCE: 1 DEC 06 - 30 NOV 07				\$ NTE
					<hr/>
ESTIMATED NET AMT					\$0.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0005AA OPTION	PART I: DEBRIS REMOVAL FFP	1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
					<hr/>
ESTIMATED NET AMT					\$15,000,000.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
0005AB OPTION	PART II: SITE MANAGEMENT/DEBRIS FFP REDUCTION	1	Lump Sum	\$15,000,000.00	\$15,000,000.00 NTE
					<hr/>
ESTIMATED NET AMT					\$15,000,000.00
Funded Amount					\$0.00

FOB: Destination

PART I - PART II



## Section C - Descriptions and Specifications

### SCOPE OF WORK

#### **PART I**

#### **SCOPE OF WORK FOR**

#### **EQUIPMENT LEASING FOR DEBRIS REMOVAL**

##### **C1.1.0 GENERAL**

C1.1.1 The purpose of Part I of this scope of work is to define the requirements for debris removal operations after any natural or man-made catastrophe or major disaster in any one of the identified regions within the U. S. Army Corps of Engineers Division (Major Subordinate Command) boundaries of South Atlantic Division (SAD), including Puerto Rico and (the Virgin Islands - **Local Contractors or Joint Ventures “Only”**), North Atlantic Division (NAD), Southwestern Division (SWD), Mississippi Valley Division (MVD), South Pacific Division (SPD), and Pacific Ocean Division (POD). A region will consist of a grouping of states/ territories within each of the below listed divisions: (NAD) Region (1) New Jersey/New York/Pennsylvania/ Connecticut/Rhode Island / Massachusetts/Vermont/New Hampshire/Maine/Maryland/Delaware/District of Columbia/Virginia/West Virginia; (SAD) Region (2) sub-regions (2A) Alabama/Florida, (2B) Georgia/North Carolina/South Carolina, (2C) Puerto Rico (2D) Virgin Islands; (MVD) Region (3) Louisiana/Mississippi; (SWD) Region (4) Texas/ Oklahoma/Arkansas; (SPD) Region (5) California/ Utah/Nevada/Arizona/New Mexico; (POD) Region (6) sub-regions (6A) Hawaii (state), (6B) Alaska (state). A Requirement/Indefinite delivery - indefinite quantity contract (ID-IQ) will be awarded for all of the given regions. The Requirements portion of the contract will be for a base and 4 optional one year ordering period with an optional IDIQ item under each one year ordering period. Prospective offerors can compete for any of the aforementioned regions but offerors will be limited to award of a single contract for each division. The Government reserves the right to utilize awarded contractors within each divisional area of responsibility for other geographical locations not currently identified on the bid schedule. In a Major Subordinate Command (MSC) for which a location is not already covered but requires the issuance of a task order, the Corps of Engineers will decide which one of its on-call Advanced Contracting Initiative (ACI) contractors (within that particular MSC) to send. This decision will reside strictly within the purview of the Government and will be based on assessments of contractor capability and pricing information previously furnished for their awarded area within the MSC. If an ACI firm is activated within such a location for which pricing has not already been established, any increase or decrease will be based on the revised wage determination(s) and/or mobilization expenses.

C1.1.2 Debris is defined as materials originating from the effects of any natural or man-made catastrophe or major disaster. Materials included are of both man-made and natural origins. Man-made debris, construction/demolition (C&D) materials includes, but not limited to: lumber, concrete, asphalt, masonry, metals, and plastics. Debris of natural origins, include but not limited to: all vegetative debris (grass, shrubs and trees) and slide materials (clay, sand, gravel, rock) and earth collected with the debris while loading trucks. Screening of debris may be required to remove earthen material prior to reduction.

##### **C1.2.0 SERVICES**

C1.2.1 The Contractor shall provide specified equipment, operators, and laborers for debris removal operations as specified in the task order. The contractor shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease and repairs) all equipment under this contract.

C1.2.2 The Contractor shall provide debris removal crews for each disaster event for the number of days specified. The Government reserves the right to extend operations on a weekly basis. For estimating purposes a daily performance level, using 10 crews shall meet a minimum daily production rate of 2500 cubic yards per day. See crew size on bidding schedules.

C1.2.3 All hourly equipment rates include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, labor, and any other costs associated with the equipment.

C1.2.4 All hourly manpower rates include the cost of protective clothing (to include hard-hats and steel toed boots), fringe benefits to include overtime, hand tools, supervision, transportation and any other costs.

C1.2.5 The work shall consist of clearing and removing disaster generated debris. Work will include: (1) loading the debris, (2 ) hauling the debris to an approved dumpsite, and (3) dumping the debris at a debris reduction site or as directed by the Contracting Officer. Woody debris will be hauled to a reduction site. Construction/demolition (C&D) debris will be hauled to an approved dumpsite. Incidental demolition may be required under this contract.

C1.2.6 The Contractor shall not move from one designated work area to another designated work area without prior approval from the COR.

C1.2.7 The Contractor shall conduct the work so as not to interfere with other disaster response and recovery activities of federal, state, and local governments or agencies, or of any public utilities.

### **C1.3.0 DUMPSITES**

C1.3.1 The Contractor shall use only designated debris dumpsites.

C1.3.2 All dumping operations shall be directed by the dumpsite operator. The Contractor shall cooperate with the dumpsite operator to facilitate effective dumping operations.

### **C1.4.0 PERFORMANCE SCHEDULE**

C1.4.1 The Contractor shall commence mobilization immediately upon award, (payment will be based on point of equipment origination) meeting the following progress patterns; 24 Hours – 25 %, 48 hours – 50%, 72 hours – 75%, and 96 hours – 100%. This represents a minimum response schedule and does not restrict the desired 24 hours response requirement stated below. The contractor shall perform in accordance with the specified requirements in all designated work areas and will commence debris removal operations within 24 hours of issuance of task order.

C1.4.2 The Contractor shall work during daylight hours “only” for a minimum of 12 hours per day, 7 days per week.

### **C1.5.0 EQUIPMENT**

C1.5.1 All trucks and equipment must be in compliance with all applicable Federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport and that will permit the truck to be filled to capacity. Truckbeds will be measured by the Government and marked for their load capacity. (See section J, Attachment, Tailgate fencing). Sideboards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and both sides, and are constructed in a manner to withstand severe operating conditions. The sideboards are to be constructed of 2” by 6” boards or greater and not to extend more than two feet above the metal bedsides and are subject to approval by the COR. Once the truck(s) are rated by the COR, it is the Contractor’s responsibility to report any adjustments of the sideboards to the COR. Extensions are subject to acceptance or rejection by the Contracting Officer’s representative. Truck loading shall comply with local Department of Transportation rules and regulations including weight limitations and the covering of truckloads.

C1.5.2 Trucks and other heavy equipment designated for use under this contract shall be equipped with two magnetic signs, one attached to each side. Signs will be provided by the Government and will be returned upon completion of the contract. The contractor will be assessed a fee of \$20 per sign for each sign not returned.

C1.5.3 Prior to commencing debris removal operations, the Contractor shall present to the Government's representative all trucks and/or trailers that will be used for hauling debris, for the purpose of determining hauling capacity. Hauling capacity, in cubic yards, will be recorded and marked on each truck or trailer. Each truck or trailer will also be numbered for identification. A sample load ticket, Section J, Attachment, will be completed by a government's representative and the driver furnished a copy.

C1.5.4 Trucks or equipment which are designated for use under this contract shall not be used for any other work during the working hours under this contract. The Contractor shall not solicit work from private citizens or others to be performed in the designated work area during the period of this contract. Under no circumstances will the Contractor mix debris hauled for others with debris hauled under this contract.

## **C1.6.0 REPORTING**

C1.6.1 The Contractor shall submit a report to the COR by close of business each day of the term of the contract. Each report shall contain, at a minimum, the following information:

- Contractor's Name
- Contract Number
- Daily and cumulative hours for each piece of equipment
- Daily and cumulative hours for personnel, by unit cost or
- Daily and cumulative cubic yards removed (see C2.7.1.2, Phase II)

## **C1.7.0 OTHER CONSIDERATIONS**

C1.7.1 The Contractor shall assign and provide an Operations Manager (OM) to the Emergency Response and Recovery Office (ERRO) to serve as the principal liaison with the Corps of Engineers Contracting Officer. The assigned OM must be knowledgeable of all facets of the Contractor's operations and have authority in writing to commit the Contractor over both Phases I and II work. The OM shall be on call 24 hours per day, seven days per week and shall have electronic linkage capability for transmitting and receiving relevant contractual information and make arrangements for on site operations. The electronic linkage shall provide immediate contact via Cell phone, Fax machine, and Internet. The OM will participate in daily After Action Reviews and disaster exercises, functioning as a source to provide essential Contractor element information. The OM will report to the Contracting Officer. This position will not require constant presence at the ERRO, rather the OM will be required to work the minimum 10 hours workday and be on call and physically capable of responding to the ERRO within 30 minutes of notification.

C1.7.2 The Contractor shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor. Additionally, the Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

C1.7.3 The Contractor must be duly licensed to perform the work in accordance with the statutory requirement of the affected state(s). The Contractor shall obtain all permits necessary to complete the work. The Contractor shall be responsible for determining what permits are necessary to perform under the contract. Copies of all permits shall be submitted to the COR prior to issuance of the first task order.

C1.7.4 The Contractor shall be responsible for correcting any notices of violations issued as a result of the Contractor's or any subcontractor's actions or operations during the performance of the contract.

C1.7.5 The Contractor shall be responsible for control of pedestrian and vehicular traffic in the work area. At a minimum, one flag person should be posted at each approach to the work area.

## **C1.8.0 HANDLING AND COLLECTION OF HOUSEHOLD HAZARDOUS WASTE**

C1.8.1 Household Hazardous Waste (HHW) is excluded from the definition of Hazardous Waste and therefore does not require the same collection or handling procedures as Hazardous Waste. Examples of HHW include, but are not

limited to: batteries, waste oil, waste fuels, paint, chemicals, antifreeze, pesticides, spray cans, unidentified liquids, and household cleaners.

C1.8.2 A crew shall be designated for removal of HHW material normally consisting of a truck and two individuals with normal debris safety gear (safety glasses, hardhat, steel toe shoes, and gloves). Each member of the crew shall be trained as per EPA requirements for handling HHW materials. The truck should be equipped with separate compartments, drums, or containers for the wastes. This will allow the crew to segregate the HHW items.

C1.8.3 While every effort will be made to have the local residents separate the HHW from the other debris, if this does not happen, the crew(s) handling the normal debris removal process will need to separate any HHW as needed during collection.

C1.8.4 The HHW crew will make passes through the affected areas. A pass is defined as, a full or partial sweep of the affected area(s) in the contract.

C1.8.5 Known or suspect asbestos containing material should be segregated from other debris and left in a place for a licensed Asbestos Abatement contractor to handle. Materials that should be segregated include but are not necessarily limited to: floor tiles, roofing shingles, linoleum, ceiling tiles, transite (exterior) shingles, concrete or flooring covered with mastic or flooring adhesive, pipe and/or boiler insulation, ceiling and /or wall texture, and stippled or blown on surfacing materials.

C1.8.6 Any labeled hazardous waste that positively has originated from a commercial building or business should be left in place for removal by others and the COR should be notified.

C1.8.7 The methods of handling and transporting HHW from the site are identified in C2.7.5 due to possible exposure to other contaminants in transit.

C1.8.8 Any white good product(s) (refrigerators, freezers, etc.) containing chemicals or fluids shall be delivered to collection points defined by the COR where a person with the appropriate license or credentials shall remove the chemical or fluids.

C1.8.9 All HHW shall be delivered to collection points defined by the COR.

C1.8.10 Contractor shall be paid by the crew hour (herein defined as a truck and two individuals with normal safety gear) with an estimate of hours to complete the number of passes agreed upon with the Government prior to the execution of the contract.

## **C1.9.0 SAFETY PROVISIONS**

C1.9.1 The safety provisions as specified herein refer to the Sep 1996 edition of EM 385-1-1. Associated safety checklists are provided in Section J.

C1.9.2. Accident Investigations and Reporting. Refer to EM 385- 1-1, Section 01.D. Accidents shall be investigated and reports completed by the immediate supervisor of the employee(s) involved and reported to the Contracting Officer or his/her representative immediately and the accident report submitted on Eng Form 3394 within one working day after the accident occurs. All data reported must be complete, timely and accurate. A follow-up report shall be submitted when the estimated lost time days differs from the actual lost time days.

C1.9.3. Accident Prevention Program. (Refer to contract clause entitled, "Accident Prevention" (*FAR 52.236-13*).) Within 15 days after receipt of Notice of Award of the contract, and at least 7 days prior to the pre-work conference, four copies of the Accident Prevention Program shall be submitted to the Contracting Officer for review and acceptance. The program shall be prepared in the following format:

- (1) An executed LMN Form 385-7-R (Aug 99), Administrative Plan, see Appendix A of EM 385-1-1.

- (2) Executed LMN 385-6-R and Form 385-43R (Aug 99), Activity Hazard Analysis, see Figure 1-1 of EM 385-1-1.
- (3) A copy of company policy statement regarding accident prevention.

The Contractor shall not commence physical work at the site until the program has been accepted by the Contracting Officer, or his/her authorized representative.

**C1.9.4. Comprehensive Hazard Communication Program.** The Contractor shall develop, implement, and maintain at the workplace a written, Comprehensive Hazard Communication Program (see Section 01.B.04 of EM 385-1-1) that includes identification of potential hazards as prescribed in 29 CFR Part 1910.1200 and/or 1926.59, effects of exposure and control measures to be used for chemical products and physical agents that may be encountered during the performance of work on this contract, provisions for container labeling, Material Safety Data Sheets, and employee training program, and other criteria in accordance with 29 CFR Part 1910.1200 and/or 1926.59. Training shall include communication methods and systems to be used (i.e., voice, hand signals, radios or other means), and training in the use and understanding of material safety data sheets and chemical product hazard warning labels. Prior to bringing hazardous substances, as defined in 29 CFR 1910.1200 and/or 1926.59, onto the job site, a copy of the Hazard Communication Program and the Material Safety Data Sheets of each substance shall be submitted to the Contracting Officer and made available to the Contractor's employees as part of its Accident Prevention Program.

**C1.9.5. Daily Inspections.** The Contractor shall perform daily safety inspections and record them on the forms approved by the Contracting Officer. Reports of daily inspections shall be maintained at the jobsite. The reports shall be records of the daily inspections and resulting actions. Each report shall include, as a minimum, the following:

- (1) Locations of areas where inspections were made.
- (2) Results of inspections, including nature of deficiencies observed and corrective actions taken, or to be taken, date, and signature of the person responsible for its contents.

**C1.9.6. Ground Fault Protection.** Electrical equipment used on this contract shall be equipped with ground fault circuit interrupters in accordance with EM 385-1-1, Section 11.C.05.

**C1.9.7. Haul Roads.** Whenever required, one-way/two-way haul roads may be used on this contract will be based on site specific requirements. Haul roads built shall be graded and maintained to keep the surface free from potholes, ruts and similar conditions.

**C1.9.8. Temporary Safety Construction Fence.** The Contractor may be required to provide, erect, and maintain a temporary safety construction fence around the limits of work.

**C1.9.9. Hazardous Energy Protection.** The Contractor shall develop, implement and maintain at the workplace, a written Control of Hazardous Energy (Lockout/Tagout) System. Refer to Section 12 of EM 385-1-1.

## **C1.10.0 MEASUREMENTS**

**C1.10.1** The number of hours of work required to complete this contract are estimated. Payment for labor and equipment will be made as specified in the task order. The cubic yards or hours worked, to the nearest ¼ hour, will be verified by the COR in the daily operational report which will be the basis for payment of Phase I. Preventive maintenance not in excess of fifteen (15) minutes in a normal workday will be paid at the regular hourly rate. Preventive maintenance or down time resulting from equipment failure and routine maintenance and fueling that exceeds fifteen (15) minutes of a work day will not be considered for payment. Preventive maintenance is defined as the usual field maintenance to keep equipment in operating condition without the use of extensive shop equipment.

## **C1.11.0 PAYMENT**

C1.11.1 The Contractor will be entitled to invoice for 60% of the mobilization and demobilization line item after all equipment is delivered to the designated work site. The remaining 40% will be due after all equipment is removed from the work site, all vehicle signs have been returned to the government and a proper invoice is received by the government.

C1.11.2 All payments made under this contract will be in accordance with the foregoing and the PAYMENTS clauses.

**PART II**  
**SCOPE OF WORK FOR**  
**EQUIPMENT LEASING FOR DUMPSITE MANAGEMENT**  
**AND DEBRIS REDUCTION**

**C2.1.0 GENERAL**

C2.1.1 The purpose of Part II of this scope of work is to define the requirements for dumpsite management and debris reduction operations after any natural or man-made catastrophe or major disaster in any one of the identified regions within the U.S. Army Corps of Engineers Division (Major Subordinate Command) boundaries of South Atlantic Division (SAD), including Puerto Rico and (the Virgin Islands - **Local Contractors or Joint-Ventures “Only”**), North Atlantic Division (NAD), Southwestern Division (SWD), Mississippi Valley Division (MVD), South Pacific Division (SPD), and Pacific Ocean Division (POD),. A region will consist of a grouping of states/territories within each of the below listed divisions: (NAD) Region (1); New Jersey/New York/ Pennsylvania/Connecticut/Rhode Island/Massachusetts/Vermont/New Hampshire/Maine/Maryland/ Delaware/ District of Columbia/ Virginia/West Virginia; (SAD) Region (2); sub-regions (2A) Alabama/Florida, (2B) Georgia/North Carolina/South Carolina, (2C) Puerto Rico, (2D) Virgin Islands; (MVD) Region (3) Louisiana/Mississippi; (SWD) Region (4) Texas/ Oklahoma/Arkansas; (SPD) Region (5) California/ Utah/Nevada/Arizona/New Mexico; (POD) Region (6) sub-regions (6A) Hawaii (state), (6B) Alaska (state). A Requirement/Indefinite delivery - indefinite quantity contract (IDIQ) will be awarded for all of the given regions. The Requirements portion of the contract will be for a base and 4 optional one year ordering period with an optional IDIQ item under each one year ordering period. Prospective offerors can compete for any of the aforementioned regions but offerors will be limited to award of a single contract for each division. The Government reserves the right to utilize awarded contractors within each divisional area of responsibility for other geographical locations not currently identified on the bid schedule. In a MSC for which a location is not already covered but requires the issuance of a task order, the Corps of Engineers will decide which one of its on-call Advanced Contracting Initiative (ACI) contractors (within that particular MSC) to send. This decision will reside strictly within the purview of the Government and will be based on assessments of contractor capability and pricing information previously furnished for their awarded area within the MSC. If an ACI firm is activated within such a location for which pricing has not already been established, any increase or decrease will be based on the revised wage determination(s) and/or mobilization expenses. The Government reserves the right to make multiple awards off a single solicitation and to award the scope of work in partial as Part I, Part II, or both.

C2.1.2 Debris is defined as materials originating from the effects of any natural or man-made catastrophe or major disaster. Materials included are of both man-made and natural origins. Man-made debris includes, but not limited to: lumber, concrete, asphalt, masonry, metals, and plastics. Debris of natural origins, include but not limited to: all vegetative debris (grass, shrubs and trees) and slide materials (clay, sand, gravel, rock) and earth collected with the debris while loading trucks. Screening of debris may be required to remove earthen material prior to reduction.

**C2.2.0 SERVICES**

C2.2.1 The Contractor shall provide specified equipment, operators, and laborers for dumpsite management and debris reduction operations as specified in the task order. The contractor shall provide all labor and materials necessary to fully operate and maintain (including fuel, oil, grease and repairs) all equipment specified under the contract schedule.

C2.2.2 The Contractor shall provide labor and equipment under Part II of this contract as specified in the contract schedule. It is contemplated that the initial tasks will take 30 days to accomplish with a Government option to extend operations on a weekly basis.

C2.2.3 All hourly equipment rates include the cost of the maintenance, fuel, repairs, overhead, profit, insurance, labor, and any other costs associated with the equipment.

C2.2.4 All hourly manpower rates include the cost of protective clothing (to include hard-hats and steel toed boots), fringe benefits to include overtime, hand tools, supervision, transportation and any other costs.

C2.2.5 The work shall consist of constructing an appropriate reduction site, managing the operations of the reduction site, perform debris reduction by air curtain incineration, and or chipping of debris, excluding concrete, asphalt, masonry and metal. A sample incineration pit drawing is provided in Section J, Attachment.

C2.2.6 The Contractor shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state, and local governments or agencies, or of any public utilities. A sample Reduction site drawing is provided in Section J, Attachment.

C2.2.7 The contractor shall be responsible for all costs associated with the final disposal of non-burnable debris and ash residue. Tipping fees will be reimbursed by the Government. Disposal of non-burnable debris and ash residue shall be made in accordance with current State, Federal, and local regulations. Contractor will be responsible for returning the reduction site to near original conditions, upon completion of reduction activities.

C2.2.8 Debris shall be reduced by mechanical means using chippers, grinders, or shredders as specified in the task order. The storage area and processing area for the debris reduction operation shall be designated by the COR based upon the site opportunities and constraints. The size of the debris pile allowed at the designated location shall be specified prior to the start of debris reduction.

C2.2.9 Debris reduction by burning. There is no industrial standard for Air Curtain Pit Burning. Air curtains are widely used in many areas. If used, contractor shall dig a pit 8ft to 9ft wide, and 14 ft deep with an impervious bottom layer of clay at least 1ft. deep. Ends sealed to a height of 4ft. Seal nozzle end with 12 inches of dirt. Warning stops at least 1ft high. Airflow should be 2ft. below the top edge of the pit. Ensure minimum nozzle velocity of 8,800 ft/min (100mph) and volume of 900 cf/min/linear ft. Pit no longer than the length of the blower nozzle. Burn pits must be set back a minimum of 100ft. from debris pile. Safety distance of at least 1,000 ft . Extinguish fire 2 hours before removing ash.

### **C2.3.0 PERFORMANCE SCHEDULE**

C2.3.1 The Contractor shall commence mobilization immediately upon award, meeting the following progress patterns: 24 hours - 25%, 48 hours - 50%, 72 hours - 75%, and 96 hours – 100%. This represents a minimum response schedule and does not restrict the desired 24 hours response requirement stated below. The contractor shall perform in accordance with the task order all designated work areas established by the Task Order and will commence debris dumpsite management and reduction operations within 24 hours of issuance of the Task Order.

C2.3.2 The Contractor shall manage dumpsite operations to coincide with hauling operation during daylight hours, 7 days per week. Management and execution of burning operations will be 24 hours per day, 7 days per week, unless directed otherwise by the Contracting Officer.

### **C2.4.0 EQUIPMENT**

C2.4.1 All equipment must be in compliance with all applicable federal, state, and local rules and regulations.

### **C2.5.0 REPORTING**

C2.5.1 The Contractor shall submit a report to the COR by close of business each day throughout the specified schedule. Each report shall contain, at a minimum, the following information:

- Contractor's Name
- Contract Number
- Daily and cumulative hours for each piece of equipment
- Daily and cumulative hours for personnel, by unit cost or
- Daily and cumulative cubic yards removed (See C2.7.1.2. Phase II)



## **C2.6.0 OTHER CONSIDERATIONS**

C2.6.1 For all conditions under Part II, The Contractor shall comply and provide compliance with required Operations Manager as stated in section C1.7.1 of Part I.

C2.6.2 The Contractor shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor. Additionally, the Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform as specified in the task order.

C2.6.3 The Contractor must be duly licensed to perform the work in the state per statutory requirements. The Contractor shall obtain all permits necessary to complete the work. The Contractor shall be responsible for determining what permits is necessary to perform under the contract. Copies of all permits shall be submitted to the COR prior to commencement.

C2.6.4 The Contractor shall be responsible for correcting any notices of violations issued as a result of the Contractor's or any subcontractor's actions or operations during the performance of the contract. Corrections for any such violations shall be at no additional cost to the Government.

C2.6.5 The Contractor shall be responsible for control of pedestrian and vehicular traffic in the work area.

## **C2.7.0 SPECIAL BID ITEMS**

### **C2.7.1 Dumpsite Foreman**

C2.7.1.1 The dumpsite foreman is responsible for management of all operations of the site to include, traffic control, dumping operations, segregation of debris into burnable, mixed, and metal materials, burning and chipping, and safety.

C2.7.1.2 The dumpsite foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the contracting officers representative, including cubic yards reduced per day and cubic yards removed from site.

C2.7.1.3 The hourly manpower rate includes the cost of a cellular telephone, protective clothing (to include hard-hats and steel toed boots), fringe benefits, hand tools, supervision, transportation and any other costs.

### **C2.7.2 Night Foreman**

C2.7.2.1 The night foreman is responsible for managing all night operations that will be limited primarily to burning, unless adequate lighting and suitable conditions, as approved by the Contracting Officer, permit grinding.

C2.7.2.2 The night foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the contracting officer's representative.

C2.7.2.3 All hourly manpower rates include the cost of a cellular telephone, protective clothing (to include hard-hats and safety shoes), fringe benefits, hand tools, security, supervision, transportation and any other costs.

### **C2.7.3 SITE MANAGEMENT PLAN**

C2.7.3.1 Once the dumpsite is located, the contractor shall provide a Site Management Plan. Five (5) copies of the plan are required. The plan shall be drawn to a scale of 1" = 50' and address following functions:

- a. Access to site
- b. Site preparation - clearing, erosion control, and grading
- c. Traffic control procedures
- d. Safety
- e. Segregation of debris
- f. Location of ash disposal area, hazardous material containment area, contractor work area, and inspection tower
- g. Location of incineration operations, chipping operation (if required). Burning operations require a 100 foot clearance for the stockpile and a 1000 foot clearance for structures.
- h. Location of existing structures or sensitive areas requiring protection.

C2.7.3.2 This item includes all labor and materials costs associated with developing this plan.

#### **C2.7.4 INSPECTION TOWER**

C2.7.4.1 The contractor shall construct an inspection tower using pressure treated wood. The floor elevation of the tower shall be 10 foot above the existing ground elevation. The floor area shall be 8' by 8', constructed of 2"x8" joists, 16" O.C. with ¾" plywood supported by four 6" x 6" posts. A 4 foot high wall constructed of 2" x 4" studs and ½ inch plywood shall protect the perimeter of the floor area. The floor area shall be covered with a corrugated tin roof. The roof shall provide a minimum of 7 ft. of headroom below the support beams. Wooden steps shall provide access with a handrail. Include the construction of a work table, 4'x 2-1/2' x ¾ " plywood supported at all four corners. The inspection tower shall be adequately anchored.

C2.7.4.2 This item includes all labor and materials costs associated with constructing the inspection tower.

C2.7.4.3 Hauling operations will not be allowed into the reduction site until an inspection platform is provided. A temporary mechanical lift may be used until a fixed tower can be constructed as specified.

#### **C2.7.5 HAZARDOUS MATERIALS CONTAINMENT AREA**

C2.7.5.1 The contractor shall construct a hazardous material containment area. This area shall be 30' x 30'. The perimeter shall be lined with hay bales and staked in place. The area shall be lined with a heavy gage plastic (or tarp for colder climates where plastic may be too brittle) to provide a waterproof barrier. Additional plastic or tarp sufficient to cover the area is required to prevent rain or snow from entering the containment. It is the Contractors responsibility to be informed of all laws pertaining to the handling of hazardous materials.

Site runoff must be redirected from the containment area by site grading. See Section J, Attachment.

C2.7.5.2 This item includes all labor and materials costs associated with constructing this containment area.

#### **C2.8.0 SAFETY PROVISIONS**

C2.8.1 The safety provisions as specified herein refer to the Sep 1996 edition of EM 385-1-1. Associated safety checklists are provided in Section J.

C2.8.2. Accident Investigations and Reporting. Refer to EM 385- 1-1, Section 01.D. Accidents shall be investigated and reports completed by the immediate supervisor of the employee(s) involved and reported to the Contracting Officer or his/her representative immediately and the accident report submitted on Eng Form 3394 within one working day after the accident occurs. All data reported must be complete, timely and accurate. A follow-up report shall be submitted when the estimated lost time days differs from the actual lost time days.

C2.8.3. Accident Prevention Program. (Refer to contract clause entitled, "Accident Prevention" (*FAR 52.236-13*)). Within 15 days after receipt of Notice of Award of the contract, and at least 7 days prior to the prework conference, four copies of the Accident Prevention Program shall be submitted to the Contracting Officer for review and acceptance. The program shall be prepared in the following format:

(1) An executed LMN Form 385-7-R (Aug 99), Administrative Plan, see Appendix A of EM 385-1-1.

(2) Executed LMN 385-6-R and Form 385-43R (Aug 99), Activity Hazard Analysis, see Figure 1-1 of EM 385-1-1.

(3) A copy of company policy statement regarding accident prevention.

The Contractor shall not commence physical work at the site until the program has been accepted by the Contracting Officer, or his/her authorized representative.

**C2.8.4. Comprehensive Hazard Communication Program.** The Contractor shall develop, implement, and maintain at the workplace a written, Comprehensive Hazard Communication Program (see Section 01.B.04 of EM 385-1-1) that includes identification of potential hazards as prescribed in 29 CFR Part 1910.1200 and/or 1926.59, effects of exposure and control measures to be used for chemical products and physical agents that may be encountered during the performance of work on this contract, provisions for container labeling, Material Safety Data Sheets, and employee training program, and other criteria in accordance with 29 CFR Part 1910.1200 and/or 1926.59. Training shall include communication methods and systems to be used (i.e., voice, hand signals, radios or other means), and training in the use and understanding of material safety data sheets and chemical product hazard warning labels. Prior to bringing hazardous substances, as defined in 29 CFR 1910.1200 and/or 1926.59, onto the job site, a copy of the Hazard Communication Program and the Material Safety Data Sheets of each substance shall be submitted to the Contracting Officer and made available to the Contractor's employees as part of its Accident Prevention Program.

**C2.8.5. Daily Inspections.** The Contractor shall perform daily safety inspections and record them on the forms approved by the Contracting Officer. Reports of daily inspections shall be maintained at the jobsite. The reports shall be records of the daily inspections and resulting actions. Each report shall include, as a minimum, the following:

(1) Locations of areas where inspections were made.

(2) Results of inspections, including nature of deficiencies observed and corrective actions taken, or to be taken, date, and signature of the person responsible for its contents.

**C2.8.6. Ground Fault Protection.** Electrical equipment used on this contract shall be equipped with ground fault circuit interrupters in accordance with EM 385-1-1, Section 11.C.05.

**C2.8.7. Haul Roads.** Whenever required, one-way/two-way haul roads may be used on this contract will be based on site specific requirements. Haul roads built shall be graded and maintained to keep the surface free from potholes, ruts and similar conditions.

**C2.8.8. Temporary Safety Construction Fence.** The Contractor maybe required to provide erect and maintain a temporary safety construction fence around the limits of work.

**C2.8.9. Hazardous Energy Protection.** The Contractor shall develop, implement and maintain at the workplace, a written Control of Hazardous Energy (Lockout/Tagout) System. Refer to Section 12 of EM 385-1-1.

## **C2.9.0 MEASUREMENT**

**C2.9.1** Payment for work completed will be based on verified hours, to the nearest ¼ hour, worked from the daily operational report. Equipment down time resulting from equipment failure, routine maintenance and fueling that exceeds fifteen (15) minutes of a workday will not be considered for payment.

**C2.9.2** Contractor shall be paid based upon an hourly rate per bid schedule or volumetric measurement as specified in the task order.

## **C2.10.0 PAYMENT**

C2.10.1 The Contractor will be entitled to invoice for 60% of the mobilization and demobilization line item after all equipment is delivered to the designated work site. The remaining 40% will be due after all equipment is removed from the work site, all vehicle signs have been returned to the government and the COR has received a proper invoice.

C2.10.2 All payments made under this task order will be in accordance with the foregoing and the PAYMENTS clauses.

## Section E - Inspection and Acceptance

### INSPECTION AND ACCEPTANCE

#### **E.1. CONTRACTOR'S DAILY INSPECTION REPORT**

Contractor's Inspection Report shall be prepared in a format approved by the Authorized Representative of the Contracting Officer. Report shall be completed and submitted daily by the Contractor to the Authorized Representative of the Contracting Officer.

### CLAUSES INCORPORATED BY FULL TEXT

#### 52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996)

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

#### 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

(a) Definitions. As used in this clause –

"Contractor's managerial personnel," means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials," includes data when the contract does not include the Warranty of Data clause.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may--
  - (i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
  - (ii) Terminate this contract for default.
- (2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to

believe that the employee is habitually careless or unqualified. (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

## Section F - Deliveries or Performance

### DELIVERIES OR PERFORMANCE

#### **F.1. PERIOD OF CONTRACT**

The period of contract performance shall be from contract award for a base and four optional one year ordering period, if exercised. The effective date of all contracts awarded under this solicitation is 1 December 2002.

#### **F.2. PERFORMANCE OF WORK**

Work ongoing for events that occur prior to award of this contract will be excluded from contracts awarded under this solicitation.

#### **F.3. ORDER LIMITATIONS**

Notwithstanding the contract clause entitled "Order Limitations" below, the maximum and minimum orders stated therein are for the combination of the requirements portion (\$100,000.00 per period) and indefinite delivery/indefinite quantity portion (\$29,900,000.00 per period) of the contract and shall not obligate the government to order services beyond that of the Requirements portion of the contract, which is a total of \$100,000.00 per period.

### CLAUSES INCORPORATED BY FULL TEXT

#### 52.216-18 ORDERING. (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from 1 December 2002 through expiration of contract.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

#### 52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$2,500, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of \$30 million;



(2) Any order for a combination of items in excess of contract ceiling amount; or

(3) A series of orders from the same ordering office within 60 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within one (1) day after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 180 days after the contract completion date.

(End of clause)

#### 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within one day; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

(End of clause)

52.242-15 STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

Section G - Contract Administration Data

CLAUSES INCORPORATED BY FULL TEXT

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

## Section H - Special Contract Requirements

### SPECIAL CONTRACT REQUIREMENTS

#### **H.1. FEMA RELATED WORK**

This award is for all FEMA related work for debris removal, disposal and site management after any natural or man-made disaster that occurs on or after 1 December 2002, see clause at F.1. The Government reserves the right to use its discretion in the award of any non-FEMA related work.

#### **H.2. NOTICE OF RESTRICTION TO FIRMS FROM THE VIRGIN ISLANDS OR JOINT VENTURES**

Prime contractors proposing bids for this solicitation must be firms from the Virgin Islands or joint ventures between United States and Virgin Island firms. To be considered as a Virgin Island firm for purposes of proposing under this solicitation, the firm must be (1) incorporated or otherwise organized and have its headquarters in the Virgin Islands, and (2) registered to do business in the Virgin Islands in accordance with the laws of the Virgin Islands.

#### **H.3. PREFERENCE FOR LOCAL FIRMS IN MAJOR DISASTER AREAS**

Pursuant to 42 U.S.C. 5150 and as implemented by Federal Acquisition Regulation Subpart 26.2, a preference, to the extent feasible and practicable, shall be given to those organizations, firms, or individuals residing or doing business primarily in the area affected by a major disaster or emergency. The authority to provide preference under this subpart applies only to those acquisitions conducted during the term of a major disaster or emergency declaration made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.). Contractors will comply with the Stafford Act, coverage at FAR 26.2 on hiring and subcontracting, to the maximum practicable extent in the disaster area and submission of reports monthly and by task order.

#### **H.4. RELEASE OF NEWS INFORMATION**

No news release (including photographs, films, public announcements or denial of confirmation of same) on any part of the subject matter of this contract or any phase of any program hereunder shall be made by the Contractor without the prior written approval of the Contracting Officer.

#### **H.5. REQUIRED INSURANCE**

The contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance in accordance with the Contract Clause entitled "Insurance-Work on a Government Installation."

##### **Workmen's Compensation and Employers' Liability Insurance:**

Workmen's Compensation and Occupational Disease Coverage in accordance with statutory limits. Employers' Liability Coverage with a minimum limit of \$100,000. (The contractor shall verify with the State Board of Workers Compensation for each state in which performance is required in connection with this contract, to determine his or her own applicability with respect to this provision.)

##### **Comprehensive Automobile Liability Insurance:**

Bodily injury coverage with minimum limits of \$200,000 per person and \$500,000 per occurrence. Property Damage Coverage with a minimum limit of \$20,000 per occurrence.

##### **Comprehensive General Liability Insurance:**

Bodily injury coverage with minimum of \$500,000 per occurrence.

At all times during performance, the Contractor shall maintain with the Contracting Officer a current Certificate of Insurance showing at least the insurance required above, and providing thirty (30) days written notice to the

Contracting Officer by the insurance company prior to cancellation or material change in policy coverage. Current Certificate of Insurance shall be furnished to the Contracting Officer within five (5) days after award of contract.

#### **H.6. SAFETY REQUIREMENTS**

All contractors must comply with the Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1 in effect on date of solicitation. The prime contractor is solely responsible to assure the safety of contract personnel in all contract activities that they and their subcontractors perform. The contractor shall also provide and take necessary measures to protect the public and Corps personnel during their activities. Actions may include but are not limited to providing flagman, ground guides, fencing, security guards, traffic control, removal of unsafe equipment and removal of unsafe workers.

The contractor shall have a comprehensive Safety and Occupational Health (SOH) program. The contractor shall provide on site staff to provide for a safe work environment and strive to execute this contract without a lost time accident or injury.

The contractor's final Accident Prevention plan including Activity Hazard analyses shall be submitted within 30 days after award.

#### **H.7. MOBILIZATION OF ADDITIONAL CONTRACTORS**

The Government will utilize this contract for all requirements up to \$100,000.00 and fully expects to exercise the IDIQ Option in the event of disaster responses with debris missions estimated in excess of the \$100,000.00. The Government, however, reserves the right to mobilize additional contractors if it is determined necessary to meet disaster response mission requirements that are in excess of \$100,000.00 of Requirements amount for base and each option period, if exercised.

#### **H.8. WAGE RATE DETERMINATIONS**

Davis Bacon Act wage rates shall apply for the duration of this contract. Each general wage decision will identify the geographic region to which it applies. Current wage decisions for the applicable geographic region(s) will be incorporated in all task orders issued for the special events covered under this contract.

#### **H.9. WAGE RATE APPLICABILITY**

The following general wage decision numbers apply to work performed in the counties designated:

	<b>DIVISION (REGION)</b>	<b>SUB-REGION AND STATES</b>
<b>3</b>	<b>MISSISSIPPI VALLEY</b>	<b>INCLUDES: LOUISIANA/ MISSISSIPPI</b>
<b>LA</b>	LA020004	CALCASIEU

LA	LA020009	ASSUMPTION, AVOYELLES, BIENVILLE, CALDWELL, CTAHOULA, CLAIBORNE, CONCORDIA, DE SOTO, EAST CARROLL, EAST FELICIANA, EVANGELINE, FRANKLIN, GRANT, IBERIA, IVBERVILLE, JACKSON, LA SALLE, LINCOLN, MADISON, MOREHOUSE, NATCHITOCHES, POINTE COUPEE, RED RIVER, RICHLAND, SABINE, ST. HELENA, ST. MARY, TANGIPAHOA, TENSAS, UNION, VERMILLION, VERNON, WASHGINTON, WEST CARROLL, WEST FELICIANA, WINN
LA	LA020010	ASCENSION, EAST BATON ROUGE, LIVINGSTON, WEST BATON ROUGE
LA	LA020012	JEFFERSON, ORLEANS, PLAQUEMINES, ST. BERNARD, ST. CHARLES, ST. JAMES, ST. JOHN THE BAPTIST, ST. TAMMANY
LA	LA020047	ACADIA, LAFAYETTE, LAFOURCHE, RAPIDES, ST. LANDRY, ST. MARTIN, TERREBONNE
LA	LA020053	BOSSIER, CADDO, OUACHITA, WEBSTER
LA	LA020054	ALLEN, BEAUREGARD, CAMERON, JEFFERSON DAVIS
MS	MS020020	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN, CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA, COPIAH, COVINGTON, DE SOTO, FORREST, FRANKLIN, GEORGE, GREENE, GRENADA, HANCOCK, HARRISON, HINDS, HOLMES, HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON, JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAMAR, LAUDERDALE, LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MADISON, MARION, MARSHALL, MONROE, MONTGOMERY, NESHOMA, NEWTON, NOXUBEE, OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC, PRENTISS, QUITMAN, RANKIN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE, SUNFLOWER, TALLAHATCHIE, TATE, TIPPAAH, TISHOMINGO, TUNICA, UNION, WALTHALL, WARREN, WASHINGTONN, WAYNE, WEBSTER, WILKINSON, WINSTON, YALOBUSHA, YAZOO (EXCLUDING: ALL WORK IN CONJUNCTION WITH THE TENNESSEE TOMBIGEE WATERWAY PROJECT.)
MS	MS020053	JACKSON
MS	MS020054	TENNESSEE - TOMBIGEE WATERWAY PROJECTS - CHICKASAW, CHOCTAW, CLAY, ITAWAMBA, LEE, LOWNDES, MONROE, NOXUBEE, PONTOTOC, PRENTISS, TISHOMINGO, WEBSTER

## WAGE DETERMINATIONS

General Decision Number LA020004

Superseded General Decision No. LA010004

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

CALCASIEU

HEAVY CONSTRUCTION PROJECTS (Includes Water & Sewer Lines, But does not include Elevated Storage Tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

CALCASIEU

CARP0953D 07/01/2001

	Rates	Fringes
CARPENTERS, Including Form Building; & PILEDRIVERMEN	18.21	2.63

-----  
ELEC0861F 10/01/2001

	Rates	Fringes
CALCASIEU PARISH: ELECTRICIANS	18.40	4.51
CABLE SPLICERS	18.90	4.51

-----  
ENGI0406S 06/01/1999

	Rates	Fringes
POWER EQUIPMENT OPERATORS: Bulldozer; Crane	15.00	3.35
100 Ton Crane & Over will receive a \$.75 premium		
150 Foot Boom & Over will receive a \$.75 premium		

-----  
LABO0207D 06/01/1999

	Rates	Fringes
LABORERS, Common	9.75	1.75

-----  
SULA2010A 11/19/1999

	Rates	Fringes
LABORERS: Pipelayer	7.80	
POWER EQUIPMENT OPERATORS: Backhoe	11.72	2.75

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter

\* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

### **General Decision Number LA020053**

General Decision Number LA020053  
Superseded General Decision No. LA010053

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

BOSSIER OUACHITA

CADDO WEBSTER

HEAVY CONSTRUCTION (Includes Water & Sewer Lines, But does not include Flood Control, Dredging, Dams or Elevated Storage Tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

BOSSIER OUACHITA

CADDO WEBSTER

ELEC0194D 01/04/2001

Rates

Fringes

BOSSIER & CADDO PARISHES:



ELECTRICIANS	18.90	7.53
-----		
SULA2008C 11/05/1999		
	Rates	Fringes
CARPENTERS:		
Form Builder	12.39	1.78
All Other Work	12.64	1.78
CONCRETE FINISHER	12.90	.85
IRONWORKERS, Reinforcing	12.95	2.56
LABORERS:		
Common	7.035	
Chain Link Fence	8.52	.80
Pipelayer	8.65	
POWER EQUIPMENT OPERATORS:		
Backhoe	12.75	
Bulldozer	11.28	
Excavator	11.50	
Front End Loader	11.59	
Trackhoe	12.66	

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

### General Decision Number LA020047

General Decision Number LA020047

Superseded General Decision No. LA010047

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

ACADIA RAPIDES TERREBONNE

LAFAYETTE ST LANDRY

LAFOURCHE ST MARTIN

HEAVY CONSTRUCTION PROJECTS (Includes Water & Sewer Lines & Water Wells, But does not include elevated storage tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

ACADIA RAPIDES TERREBONNE

LAFAYETTE ST LANDRY

LAFOURCHE ST MARTIN

IRON0058H 06/18/2001

	Rates	Fringes
LAFOURCHE & TERREBONNE PARISHES (West of a straight line drawn from the Louisiana-Mississippi border, east of the city limits of Warrenton, <b>Louisiana</b> , southwest through Hammond, <b>Louisiana</b> to the Gulf of Mexico):		

IRONWORKERS, Structural	17.30	4.70
-------------------------	-------	------

-----  
IRON0623E 06/18/2001

	Rates	Fringes
ACADIA, LAFAYETTE & ST. LANDRY PARISHES (East of a line drawn from the meeting point of the boundaries of the parishes of Rapides, Avoyelles & Evangeline, southeast along the western city limits of Abbeville to the Gulf of Mexico);		
ST. MARTIN PARISH;		

LAFOURCHE & TERREBONNE PARISHES (West of a straight line drawn from the Louisiana-Mississippi border, west of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico):		
IRONWORKERS, Structural	17.30	4.40

-----  
IRON0710E 06/18/2001

	Rates	Fringes
ACADIA, LAFAYETTE & ST. LANDRY PARISHES (Southwest of Rapides Parish & west of a line south of the westernmost border between		

Rapides & Evangeline);

RAPIDES PARISH:

IRONWORKERS, Structural	17.30	4.41
-------------------------	-------	------

-----  
SULA2001A 11/22/1999

	Rates	Fringes
CARPENTERS:		
Form Building	10.00	
All Other Work	11.49	
CONCRETE FINISHERS	8.62	
ELECTRICIANS	10.93	
LABORERS:		
Common	6.57	
Pipelayer	6.87	
PILEDRIVERMEN	11.06	
PLUMBERS	13.63	.66
POWER EQUIPMENT OPERATORS:		
Backhoe	8.92	
Boring Machine	10.00	
Bulldozer	9.72	
Crane	11.00	
Excavator	9.49	
Front End Loader	9.54	
Mechanic	10.00	
Oiler	7.00	
Roller	7.00	
Trencher	9.00	
TRUCK DRIVERS, Dump	6.97	
WATER WELL DRILLERS	7.98	.70
WELDERS	8.63	

-----  
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----  
In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division

U. S. Department of Labor  
200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

### **General Decision Number LA020013**

General Decision Number LA020013

Superseded General Decision No. LA010013

State: **Louisiana**

Construction Type:

SEWER AND WATER LINE

County(ies):

JEFFERSON ST BERNARD ST JOHN THE BAP

ORLEANS ST CHARLES ST TAMMANY

PLAQUEMINES ST JAMES

SEWER & WATER LINES

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

JEFFERSON ST BERNARD ST JOHN THE BAP

ORLEANS ST CHARLES ST TAMMANY

PLAQUEMINES ST JAMES

CARP1098C 05/01/1998

	Rates	Fringes
ST. JAMES PARISH (North of the Mississippi River):		
CARPENTERS, Including Form Building	10.40	1.95

-----  
CARP1846H 07/01/1998

	Rates	Fringes
CARPENTERS, Including Form Building:		
Jefferson, Orleans & St. Bernard		
Parishes	14.31	3.05
Plaquemines Parish	11.88	3.05
St. Charles & St. John The Baptist		
Parishes	12.73	3.05
St. James (South of the		
Mississippi River) & St. Tammany		
Parishes	10.26	3.05

-----  
SULA2026A 11/08/1999

	Rates	Fringes
LABORERS:		
Common	7.69	
Pipelayers	9.13	
POWER EQUIPMENT OPERATORS:		
Backhoe	11.34	
Bulldozer	10.72	

-----  
TEAM0270C 07/01/1998

	Rates	Fringes
TRUCK DRIVERS, Lowboy:		
Jefferson, Orleans & St. Bernard		
Parishes	11.47	
Plaquemines Parish	11.15	
St. Charles & St. John the Baptist		
Parishes	11.43	
St. Tammany Parish	9.53	

-----  
WELDERS - Receive rate prescribed for craft performing operation  
to which welding is incidental.

=====

Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates  
listed under that identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a  
position on a wage determination matter
- \* a conformance (additional classification and rate)  
ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

**General Decision Number LA020012**

General Decision Number LA020012

Superseded General Decision No. LA010012

State: **Louisiana**

Construction Type:

HEAVY

TREATMENT PLANT

County(ies):

JEFFERSON ST BERNARD ST JOHN THE BAP

ORLEANS ST CHARLES ST TAMMANY

PLAQUEMINES ST JAMES

HEAVY CONSTRUCTION PROJECTS (Includes the heavy part of  
Treatment Plants, BUT Does not include Flood Control, Industria  
& Processing Plants, Refineries, Water & Sewer Lines, Dredging,  
Dams or Elevated Storage Tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

JEFFERSON ST BERNARD ST JOHN THE BAP

ORLEANS ST CHARLES ST TAMMANY

PLAQUEMINES ST JAMES

CARP1846J 07/01/1998

	Rates	Fringes
PILEDRIVERMEN:		
Jefferson, Orleans & St. Bernard		
Parishes	14.31	3.05
Plaquemines Parish	11.88	3.05
St. Charles & St. John the Baptist		
Parishes	12.73	3.05
St. James (South of the Mississippi		
River) & St. Tammany Parishes	10.26	3.05

-----  
ELEC0130F 09/01/2001

	Rates	Fringes
JEFFERSON, ORLEANS, PLAQUEMINES, ST. BERNARD, ST. CHARLES,		
ST. JAMES & ST. JOHN THE BAPTIST PARISHES:		
ELECTRICIANS	21.14	3.81

-----  
ELEC1077B 06/01/2001

	Rates	Fringes
ST. TAMMANY PARISH:		
ELECTRICIANS	18.05	3.04

-----  
ENGI0406R 07/01/1998

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
Bulldozer; *Crane; & Mechanic:		
Jefferson, Orleans & St. Bernard		
Parishes	14.66	3.30
Plaquemines Parish	12.01	3.30
St. Charles & St. John the Baptist		
Parishes	12.98	3.30
St. James & St. Tammany Parishes	10.24	3.30
*CRANE PREMIUM:		
50 Tons to 150 Tons - \$1.00 per hour		
Over 150 Tons - \$1.50 per hour		
-----		
IRON0058G 06/18/2001		
	Rates	Fringes
JEFFERSON, ORLEANS, PLAQUEMINES, ST. BERNARD, ST. CHARLES,		
ST. JAMES (Excluding area West of a straight line drawn from the		
Louisiana-Mississippi border, west of the city limits of		
Warrenton, southwest through Hammond to the Gulf of Mexico),		
ST. JOHN THE BAPTIST & ST. TAMMANY PARISHES:		
IRONWORKERS, Reinforcing	17.30	4.70
-----		
IRON0623D 06/18/2001		
	Rates	Fringes
ST. JAMES PARISH (West of a straight line drawn from the		
Louisiana-Mississippi border, west of the city limits of		
Warrenton, southwest through Hammond to the Gulf of Mexico):		
IRONWORKERS, Reinforcing	17.30	4.40
-----		
LABO0689C 07/01/1998		
	Rates	Fringes
LABORERS, Common:		
Jefferson, Orleans & St. Bernard		
Parishes	9.70	1.42
Plaquemines Parish	8.13	1.42
St. Charles & St. John the Baptist		
Parishes	8.13	1.42
St. James & St. Tammany Parishes	6.91	1.42
-----		
PLUM0060B 06/01/2001		
	Rates	Fringes
JEFFERSON, ORLEANS, PLAQUEMINES, ST. BERNARD, ST. CHARLES,		
ST. JAMES (E. Pt.), ST. JOHN THE BAPTIST & ST. TAMMANY PARISHES:		
PIPEFITTERS	19.65	4.56
-----		
PLUM0198E 01/01/2002		
	Rates	Fringes
ST. JAMES PARISH:		
PIPEFITTERS	21.00	4.40
-----		
SULA2026C 11/08/1999		
	Rates	Fringes
CARPENTERS:		
Form Building/Form Setting	11.87	
All Other Work	11.05	
CONCRETE FINISHERS	10.80	
IRONWORKERS, Structural	11.95	
LABORERS:		
Mason Tender	9.06	
Pipelayer	10.04	
PAINTERS	13.16	2.12
POWER EQUIPMENT OPERATORS:		
Backhoe	13.00	2.38
Bobcat	11.35	



Cherry Picker	11.35
WELDERS	11.50

-----  
TEAM0270B 07/01/1998

	Rates	Fringes
TRUCK DRIVERS, Dump & Lowboy:		
Jefferson, Orleans & St. Bernard		
Parishes	11.47	
Plaquemines Parish	11.15	
St. Charles & St. John The Baptist		
Parishes	11.43	
St. Tammany Parish	9.53	

-----  
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----  
In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor

200 Constitution Avenue, N. W.  
Washington, D. C. 20210  
4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

**General Decision Number LA020010**

General Decision Number LA020010  
Superseded General Decision No. LA010010

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

ASCENSION LIVINGSTON

EAST BATON ROUGE WEST BATON ROUGE

HEAVY CONSTRUCTION PROJECTS (Not including elevated storage tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

ASCENSION LIVINGSTON

EAST BATON ROUGE WEST BATON ROUGE

ENGI0406L 07/01/1998

	Rates	Fringes
LIVINGSTON PARISH:		
POWER EQUIPMENT OPERATORS:		
Crane, Below 25 Tons	16.10	3.50
Crane, 25 Tons & Up	18.00	3.50
Oiler Driver II	13.80	3.50
Oiler Driver	13.05	3.50

Oiler 11.35 3.50

TONAGE PREMIUMS FOR CRANES:

60 Tons & Up to 100 Tons - \$.50 Premium;  
100 Tons & Up to 125 Tons - \$.75 Premium;  
125 Tons & Up to 200 Tons - \$1.00 Premium;  
200 Tons & Up to 300 Tons - \$1.25 Premium;  
300 Tons & Up to 500 Tons - \$2.00 Premium;  
500 Tons & Up to 1,000 Tons - \$3.00 Premium;  
1,000 Tons & Over - \$5.00 Premium

-----  
ENGI0406M 03/04/1998

	Rates	Fringes
ASCENSION, EAST BATON ROUGE & WEST BATON ROUGE PARISHES:		
POWER EQUIPMENT OPERATORS:		
Crane, 500 Tons & over	19.10	3.20
Crane, 300 Tons & Up to 500 Tons	18.60	3.20
Crane, 200 Tons & up to 300 Tons;		
Boom - Crane, 300 ft & Over	18.10	3.20
Crane, 125 Tons & Up to 200 Tons;		
Boom - Crane, 225 ft & Over, But		
Less than 300 ft	17.60	3.20
Crane, 100 Tons & Up to 125 Tons;		
Boom - Crane, 150 ft & Over, But		
Less than 225 ft	17.10	3.20
Crane, 61 Tons & Over; Boom - Crane,		
100 ft & Over, But Less than		
150 ft	16.60	3.20
Crane; Locomotive Crane; Hydrolift		
Crane; & Yard Crane	16.10	3.20
Oiler Driver III	14.05	3.20
Oiler Driver II	13.25	3.20
Oiler Driver I	12.25	3.20
Oiler	10.75	3.20

-----  
SULA2003A 10/01/1996

	Rates	Fringes
CARPENTERS (Form Builders Only)	11.15	
CONCRETE FINISHERS	10.50	
LABORERS:		
Common	7.59	
Pipelayer	8.75	
POWER EQUIPMENT OPERATORS:		
Backhoe	9.67	
Track Excavator	10.25	
TRUCK DRIVERS:		
Dump	9.50	
Trailer	7.50	

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

**General Decision Number LA020009**

General Decision Number LA020009

Superseded General Decision No. LA010009

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

ASSUMPTION GRANT SABINE

AVOUELLES IBERIA ST HELENA

BIENVILLE IBERVILLE ST MARY

CALDWELL JACKSON TANGIPAHOA

CATAHOULA **LA** SALLE TENSAS

CLAIBORNE LINCOLN UNION

CONCORDIA MADISON VERMILION

DE SOTO MOREHOUSE VERNON

EAST CARROLL NATCHITOCES WASHINGTON

EAST FELICIANA POINTE COUPEE WEST CARROLL

EVANGELINE RED RIVER WEST FELICIANA

FRANKLIN RICHLAND WINN

HEAVY CONSTRUCTION PROJECTS (Does not include Elevated Storage Tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

ASSUMPTION GRANT SABINE

AVOUELLES IBERIA ST HELENA

BIENVILLE IBERVILLE ST MARY

CALDWELL JACKSON TANGIPAHOA

CATAHOULA **LA** SALLE TENSAS

CLAIBORNE LINCOLN UNION

CONCORDIA MADISON VERMILION

DE SOTO MOREHOUSE VERNON

EAST CARROLL NATCHITOCES WASHINGTON

EAST FELICIANA POINTE COUPEE WEST CARROLL

EVANGELINE RED RIVER WEST FELICIANA

FRANKLIN RICHLAND WINN

ELEC0130J 09/01/2001

	Rates	Fringes
ASSUMPTION & ST. MARY (Northeast of the Atchafalaya River)		

PARISHES:

ELECTRICIANS	21.14	3.81
--------------	-------	------

-----  
ELEC0194G 01/04/2001

	Rates	Fringes
BIENVILLE, CLAIBORNE, DE SOTO, NATCHITOCES (Northeast of the Red River) & RED RIVER PARISHES:		

ELECTRICIANS	18.90	7.53
--------------	-------	------

CABLE SPLICERS	19.40	7.54
----------------	-------	------

-----  
ELEC0446D 09/01/2001

	Rates	Fringes
CALDWELL, EAST CARROLL, FRANKLIN, JACKSON, LINCOLN, MADISON, MOREHOUSE, RICHLAND, TENSAS, UNION & WEST CARROLL PARISHES:		

ELECTRICIANS	17.35	3.80
--------------	-------	------

CABLE SPLICERS	17.60	3.81
----------------	-------	------

-----  
ELEC0576B 09/01/2001

	Rates	Fringes
AVOYELLES, CATAHOULA, CONCORDIA, EVANGELINE, GRANT, LA SALLE, NATCHITOCHES (Southwest of Red River), SABINE, VERNON & WINN PARISHES:		
ELECTRICIANS	17.75	3.41
CABLE SPLICERS	18.25	3.43
-----		
ELEC0861D 10/01/2001		
IBERIA, ST. MARY (Southwest of Atchafalaya River) & VERMILION PARISHES:		
ELECTRICIANS	18.40	4.51
CABLE SPLICERS	18.90	4.51
-----		
ELEC0995B 12/01/2001		
EAST FELICIANA, IBERVILLE, POINTE COUPEE, ST. HELENA & WEST FELICIANA PARISHES:		
ELECTRICIANS:		
Electrical Contracts Up to & Including 5 Million Dollars:		
Electrician	18.65	4.55
Cable Splicer	18.90	4.57
Electrical Contracts Over 5 Million Dollars:		
Electrician	19.30	4.62
Cable Splicer	19.55	4.65
-----		
ELEC1077A 06/01/2001		
TANGIPAHOA & WASHINGTON PARISHES:		
ELECTRICIANS	18.05	3.04
CABLE SPLICERS	18.80	3.06
-----		
PLUM0060E 06/01/2001		
TANGIPAHOA (Cities of Robert, Hammond, Ponchatoula, Tickfaw, Baptist & Pumpkin Center) & WASHINGTON PARISHES:		
PIPEFITTERS; PLUMBERS; & STEAMFITTERS		
	19.65	4.56
-----		
PLUM0106B 11/01/2001		
IBERIA (West of Hwy 31 & Hwy 83) & VERMILION PARISHES:		
PLUMBERS & STEAMFITTERS	17.38	4.04
-----		
PLUM0141C 08/01/2000		
BIENVILLE, CLAIBORNE, DE SOTO, RED RIVER & SABINE PARISHES; NATCHITOCHES & VERNON PARISHES (Northwest of a line drawn from Natchitoches to Anacoco through Bellwood & north of Hwy #111 between Anacoco & Haddens); WINN PARISH (West of a line drawn from Winnfield to the junction of the Parish boundaries of Winn, Bienville & Jackson):		
PLUMBERS & PIPEFITTERS	17.90	5.55
-----		
PLUM0198B 01/01/2002		
ASSUMPTION, EAST FELICIANA, IBERIA (East of Hwy 31 & Hwy 83), IBERVILLE, POINTE COUPEE, ST. HELENA, ST. MARY, TANGIPAHOA (Excluding Cities of Robert, Hammond, Ponchatoula, Tickfaw, Baptist & Pumpkin Center) & WEST FELICIANA PARISHES:		
PLUMBERS & STEAMFITTERS	21.00	4.40
-----		

PLUM0247A 05/01/2001

AVOYELLES, CATAHOULA, CONCORDIA, EVANGELINE, GRANT, LA SALLE,  
NATCHITOCHES (City limits of Natchitoches, Hwy #6 to Hagewood &  
Hwy #117), & VERNON (Ft. Polk & Hwy #117, south to Leesville)  
PARISHES:

PLUMBERS & STEAMFITTERS:

Work where contract price of the  
mechanical work is less than  
\$3,000,000.00

Rates Fringes

17.20 3.70

Work where contract price of the  
mechanical work is more than  
\$3,000,000.00

18.20 3.70

-----  
PLUM0659A 07/01/2001

CALDWELL, EAST CARROLL, FRANKLIN, JACKSON, LINCOLN, MADISON,  
MOREHOUSE, OUACHITA, RICHLAND, TENSAS, UNION, WEST CARROLL &  
WINN (North of Hwy #84) PARISHES:

PIPEFITTERS; PLUMBERS; &  
STEAMFITTERS

Rates Fringes

17.00 3.95

-----  
SULA2004A 09/01/1987

	Rates	Fringes
CARPENTERS	10.37	
IRONWORKERS, STRUCTURAL	8.50	
LABORERS:		
Unskilled	5.69	
Pipelayers	6.46	
PILEDRIVERMEN	9.75	
POWER EQUIPMENT OPERATORS:		
Backhoes	9.17	
Bulldozers	8.79	
Front End Loaders	7.77	
TRUCK DRIVERS	7.26	
WATER WELL DRILLERS	8.16	1.36

-----  
WELDERS - Receive rate prescribed for craft performing operation  
to which welding is incidental.

=====

Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates  
listed under that identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a  
position on a wage determination matter
- \* a conformance (additional classification and rate)  
ruling

On survey related matters, initial contact, including requests  
for summaries of surveys, should be with the Wage and Hour  
Regional Office for the area in which the survey was conducted  
because those Regional Offices have responsibility for the  
Davis-Bacon survey program. If the response from this initial

contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



**General Decision Number LA020054**

General Decision Number LA020054

Superseded General Decision No. LA010054

State: **Louisiana**

Construction Type:

HEAVY

County(ies):

ALLEN CAMERON

BEAUREGARD JEFFERSON DAVIS

HEAVY CONSTRUCTION PROJECTS (Does not include Elevated Storage Tanks)

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

ALLEN CAMERON

BEAUREGARD JEFFERSON DAVIS

BOIL0079E 11/01/1999

	Rates	Fringes
BOILERMAKERS	20.10	6.50
-----		
BRLA0001N 05/01/2001		
	Rates	Fringes
BRICKLAYERS & STONEMASONS	17.40	3.80
-----		
BRLA0001O 05/01/1999		
	Rates	Fringes
CAULKERS; CLEANERS; & POINTERS	17.27	3.20
-----		
ELEC0861I 10/01/2001		
	Rates	Fringes
ELECTRICIANS	18.40	4.51
CABLE SPLICERS	18.90	4.51
-----		
ELEC0861J 05/01/1998		
	Rates	Fringes
LINE CONSTRUCTION:		
Equipment Operator; Lineman; &		
Truck Driver	19.70	3.96
Cable Splicer	20.20	3.98
Groundman	17.70	3.90
-----		
PAIN0080G 11/01/2000		
	Rates	Fringes
PAINTERS	13.94	1.15
-----		
PLUM0106G 11/01/2001		
	Rates	Fringes
PLUMBERS & STEAMFITTERS	17.38	4.04

-----  
SHEE0021D 08/01/2000

	Rates	Fringes
SHEET METAL WORKERS	19.95	4.52

-----

SULA2002B 05/29/1990

	Rates	Fringes
--	-------	---------

ZONE 1 - CAMERON PARISH (STRATEGIC PETROLEUM RESERVE)

ZONE 2 - BEAUREGARD, CAMERON (EXCLUDING STRATEGIC PETROLEUM RESERVE) & JEFFERSON DAVIS PARISHES

ZONE 3 - ALLEN PARISH

CARPENTERS & PILDRIVERMEN:

ZONE 1	13.15	1.60
--------	-------	------

ZONE 2	8.40	1.60
--------	------	------

ZONE 3	11.19	1.60
--------	-------	------

CEMENT MASONS:

ZONE 1	14.94	
--------	-------	--

ZONE 2	8.07	
--------	------	--

ZONE 3	10.15	
--------	-------	--

IRONWORKERS:

ZONE 1	14.29	2.42
--------	-------	------

ZONE 2	9.11	2.42
--------	------	------

ZONE 3	11.19	2.42
--------	-------	------

LABORERS:

ZONE 1	9.46	1.04
--------	------	------

ZONE 2	5.99	1.04
--------	------	------

ZONE 3	7.55	1.04
--------	------	------

POWER EQUIPMENT OPERATORS:

ZONE 1:

GROUP 1	14.56	2.50
---------	-------	------

GROUP 2	14.81	2.50
---------	-------	------

GROUP 3	14.31	2.50
---------	-------	------

GROUP 4	10.73	2.50
---------	-------	------

GROUP 5	8.59	2.50
---------	------	------

ZONE 2:

GROUP 1	9.36	2.50
---------	------	------

GROUP 2	9.61	2.50
---------	------	------

GROUP 3	9.11	2.50
---------	------	------

GROUP 4	6.83	2.50
---------	------	------

GROUP 5	5.47	2.50
---------	------	------

ZONE 3:

GROUP 1	11.44	2.50
---------	-------	------

GROUP 2	11.69	2.50
---------	-------	------

GROUP 3	11.19	2.50
---------	-------	------

GROUP 4	8.39	2.50
---------	------	------

GROUP 5	6.71	2.50
---------	------	------

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1 - 60 Ton Crane & Over, Crane with 125 ft Boom

GROUP 2 - Crane with 175 ft Boom

GROUP 3 - Crane; Derrick; Deck Winch (2); HI-HO & Similar type Equipment; 3 Drums (or more) Stabilizer; Pull; Concrete Mixer

1 Yd & Over; Paver; Ditching or Trenching Machine (Track

Type); Mechanic & Equipment Welder; Well Point System; Hoist,

2 Drums or More; Hoist, 1 Drum, 40 Vertical ft or More;

Scraper, Bulldozer, Rubber-tired or Track, other than Farm-

type; Scoopmobile; Motor Patrol; Gradeall; Roller on Hot Mix;

Asphalt Paving Machine, Front End Loader, other than Farm-type

1 Cu yd or Over; Shovel & Backhoe & Equivalent Equipment;

Piledriver; & Sideboom Cat

GROUP 4 - 2 Drums & Single Drum Stabilizer; Front End Loader

Under 1 cu yd; A-Frame Truck, except when Handling Steel or

Pipe; Finishing Machine (Concrete); Power Subgrader; 2 Tractor

(Crawler type); 1 Drum Hoist Under 40 Vertical Ft.;

Fireperson; Concrete Spreader; Pugmill, Bituminous Distributor

on Surface Treatment & Equivalent Equipment; Bullfloat & Equivalent Equipment; Job Grease Man; Unit Operator; Work Boat (Not requiring licensed operators); Inboard-Outboard Motored Crew Boat; Concrete Mixer Under 1 Yd.; Spray Curing Machine; Roller on Subgrade; 1 Air Compressor Over 125 cu ft.; Form Grader; Asphalt Finisher Screed Man; Pump Over 4"; Scale; Crusher; Concrete Jointing Machine; Concrete Saw; Tack Machine & Equivalent Equipment; Pumpcrete; Electric Elevator (Inside); Oiler-Driver; Farm-type Rubber-Tired Tractor, with Attachment, except Backhoe; Kolum Buff & Similar Equipment; Fork Lift 10 Ton Capacity & Under; Batch Plant; Oiler on Crane using Air to Drive Pile; Fireperson Operating Steam Valve, Unit Operator; & Oiler- Driver

GROUP 5 - Oiler

TRUCK DRIVERS:

ZONE 1	9.75	1.10
ZONE 2	7.33	1.10
ZONE 3	9.41	1.10

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

### **General Decision Number MS020020**

General Decision Number MS020020

Superseded General Decision No. MS010020

State: **Mississippi**

Construction Type:

**HEAVY**

County(ies):

ADAMS ISSAQUENA PERRY

ALCORN ITAWAMBA PIKE

AMITE JASPER PONTOTOC

ATTALA JEFFERSON PRENTISS

BENTON JEFFERSON DAVIS QUITMAN

BOLIVAR JONES RANKIN

CALHOUN KEMPER SCOTT

CARROLL LAFAYETTE SHARKEY

CHICKASAW LAMAR SIMPSON

CHOCTAW LAUDERDALE SMITH

CLAIBORNE LAWRENCE STONE

CLARKE LEAKE SUNFLOWER

CLAY LEE TALLAHATCHIE

COAHOMA LEFLORE TATE

COPIAH LINCOLN TIPPAAH

COVINGTON LOWNDES TISHOMINGO

DE SOTO MADISON TUNICA

FORREST MARION UNION

FRANKLIN MARSHALL WALTHALL

GEORGE MONROE WARREN

GREENE MONTGOMERY WASHINGTON

GRENADA NESHOBIA WAYNE  
HANCOCK NEWTON WEBSTER  
HARRISON NOXUBEE WILKINSON  
HINDS OKTIBBEHA WINSTON  
HOLMES PANOLA YALOBUSHA  
HUMPHREYS PEARL RIVER YAZOO  
**HEAVY** CONSTRUCTION PROJECTS (including Water & Sewer Lines)  
excluding all work in conjunction with the Tennessee Tombigbee  
Waterway Project.

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

ADAMS ISSAQUENA PERRY  
ALCORN ITAWAMBA PIKE  
AMITE JASPER PONTOTOC  
ATTALA JEFFERSON PRENTISS  
BENTON JEFFERSON DAVIS QUITMAN  
BOLIVAR JONES RANKIN  
CALHOUN KEMPER SCOTT  
CARROLL LAFAYETTE SHARKEY  
CHICKASAW LAMAR SIMPSON  
CHOCTAW LAUDERDALE SMITH  
CLAIBORNE LAWRENCE STONE  
CLARKE LEAKE SUNFLOWER  
CLAY LEE TALLAHATCHIE  
COAHOMA LEFLORE TATE  
COPIAH LINCOLN TIPPAAH  
COVINGTON LOWNDES TISHOMINGO  
DE SOTO MADISON TUNICA  
FORREST MARION UNION  
FRANKLIN MARSHALL WALTHALL  
GEORGE MONROE WARREN  
GREENE MONTGOMERY WASHINGTON  
GRENADA NESHOBIA WAYNE  
HANCOCK NEWTON WEBSTER  
HARRISON NOXUBEE WILKINSON  
HINDS OKTIBBEHA WINSTON  
HOLMES PANOLA YALOBUSHA  
HUMPHREYS PEARL RIVER YAZOO

SUMS2001A

CONSTRUCTION DESCRIPTION: **Heavy** Construction (including Water &  
Sewer Lines) excluding all work in conjunction with the  
Tennessee Tombigbee Waterway Project and **Heavy** Construction in  
Jackson County.

SUMS2001A 11/01/1980

	Rates	Fringes
BRICKLAYERS	8.00	
CARPENTERS	6.23	
CEMENT MASONS	5.15	
ELECTRICIANS	9.84	
IRONWORKERS	8.15	
LABORERS:		
Unskilled	5.15	
Pipelayers	5.15	
Drillers	5.15	
PAINTERS	7.00	
PLUMBERS	7.81	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.56	
Bulldozer	5.38	
Crane	6.61	
Dragline	5.94	
Front End Loader	5.40	
Mechanic	8.15	

Motor Grader 5.25  
Scraper 5.15  
Oiler 5.51  
WELDERS - receive rate prescribed for craft performing operation  
to which welding is incidental.

-----  
WELDERS - Receive rate prescribed for craft performing operation  
to which welding is incidental.

=====

Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29 CFR 5.5(a)(1)(v)).

-----

In the listing above, the "SU" designation means that rates  
listed under that identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a  
position on a wage determination matter
- \* a conformance (additional classification and rate)  
ruling

On survey related matters, initial contact, including requests  
for summaries of surveys, should be with the Wage and Hour  
Regional Office for the area in which the survey was conducted  
because those Regional Offices have responsibility for the  
Davis-Bacon survey program. If the response from this initial  
contact is not satisfactory, then the process described in 2.)  
and 3.) should be followed.

With regard to any other matter not yet ripe for the formal  
process described here, initial contact should be with the Branch  
of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an  
interested party (those affected by the action) can request  
review and reconsideration from the Wage and Hour Administrator  
(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the  
interested party's position and by any information (wage payment  
data, project description, area practice material, etc.) that the  
requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an  
interested party may appeal directly to the Administrative Review  
Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

**General Decision Number MS020053**

General Decision Number MS020053

Superseded General Decision No. MS010053

State: **Mississippi**

Construction Type:

**HEAVY**

County(ies):

JACKSON

**HEAVY** CONSTRUCTION PROJECTS

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

JACKSON

SUMS2002A 04/01/1988

	Rates	Fringes
JACKSON COUNTY		
CARPENTER	7.83	
CEMENT MASONS	7.50	
LABORERS:		
Unskilled	5.65	
Pipelayers	6.00	
PIPEFITTERS	10.00	
POWER EQUIPMENT OPERATORS:		
Backhoe	10.00	
Bulldozer	10.00	
Crane	10.36	
Front end loader	10.50	
Mechanic	12.00	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----  
In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor

200 Constitution Avenue, N. W.

Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

#### **General Decision Number MS020054**

General Decision Number MS020054

Superseded General Decision No. MS010054

State: **Mississippi**

Construction Type:

**HEAVY**

County(ies):

CHICKASAW LEE PONTOTOC

CHOCTAW LOWNDES PRENTISS

CLAY MONROE TISHOMINGO

ITAWAMBA NOXUBEE WEBSTER

**HEAVY CONSTRUCTION PROJECTS** (Tennessee-Tombigee Waterway Projects).

Modification Number Publication Date

0 03/01/2002

COUNTY(ies):

CHICKASAW LEE PONTOTOC

CHOCTAW LOWNDES PRENTISS

CLAY MONROE TISHOMINGO



ITAWAMBA NOXUBEE WEBSTER  
SUMS2003A 09/09/1991

	Rates	Fringes
Carpenters:		
Carpenters	9.20	
Millwrights & Piledrivermen	10.01	
Cement Masons:		
Cement Masons	8.78	.75
Operators	9.11	.75
Laborers:		
Construction Laborers,		
Wrecking & Demolition	6.30	.70
Tenders (brick, stone,		
& plasterer), Pipelayers	6.70	.70
Power Equipment Operators:		
Group A	10.17	1.20
Group B	9.46	1.20
Group C	8.33	1.20
Truck Drivers:		
1 to 3 Tons	6.72	.75
3 1/2 Tons & over	7.12	.75

#### POWER EQUIPMENT CLASSIFICATION

Group A - Asphalt Plant, Backhoe, Blacksmith, Boom Tractor, Bulldozer, Central Mixing Plant, Cherry Picker, Clamshell, Crane, Derrick, Derrick Boat, Derrick Car, Dragline, Dredge, Elevating Grader, Excavator (Power Belt), Forklift (5 ton & over), Hoists (2- drum active use), Locomotive Engineer, Marine Engineer (Chief), Master Pilot, Mechanic, Mixermobile, Motor Patrol and similas equipment, Paver (21 c.f. or larger), Pile Driver, Recharger, Roving Greaser (1st), Scoop (skimmer), Scraper, Shovel, Trenching Machine (over 18" bucket line width), Trunapull (DW-10 & similar pull type scraper), Traxcavator & similar endloaders, Welding Machines & Pumps, Well Driller, Well Point Pumps, Mechanics.

Group B - Asphalt Spreader (bituminous distributor), Asphalt Spreader (bituminous mixer) Backfilling Machine, Conveyor, Drill (earth), Finishing Machine, Fireman, Forklift (over 2 Tons & less then 5 Tons), Heating Plant, Hoist (one-drum), Marina Engineers Assistant, Mixer, Payloader and similar endloaders, Pilot, Power Generating Plant, Pump (concrete), Roller, Scoopmobile, Tractor (with power takeoff), Tractor, Trenching Machine 18" or smaller bucket line width), Tugboat, Winch Truck.

Group C - Air Compressor, Batch Scale, Deckhand Forklift (2 Ton & Under), Form Grader, Locomotive hoister, Motorboat (in or outboard), Oiler, Pump, Roughneck, Scowman, Tractor (without attachment), Welding Machine.

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

-----  
In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

## CLAUSES INCORPORATED BY FULL TEXT

### 52.216-21 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations

or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 30 November 2007.

(End of clause)

#### 52.229-5 TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

#### 52.236-13 ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will

(1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) avoid interruptions of Government operations and delays in project completion dates; and

(3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the

solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

#### 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

## Section I - Contract Clauses

### CLAUSES INCORPORATED BY FULL TEXT

#### 52.202-1 DEFINITIONS. (DEC 2001)

(a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--

(1) Any item, other than real property, that is of a type customarily used by the public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states

prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

#### 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

#### 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

#### 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in



paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

#### 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

#### 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the

Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

- (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (e) Penalties.
- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause--

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as--

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

#### 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of

Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

#### 52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--



(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

#### 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

#### 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were

not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

#### 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

#### 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of provision)

#### 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items. (A) If--

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

#### 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

\_\_\_ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

#### 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned

small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

Definitions. As used in this contract--

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

#### 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all



subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated)

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether HUBZone small business concerns were solicited and, if not, why not;

(D) Whether small disadvantaged business concerns were solicited and, if not, why not;

(E) Whether women-owned small business concerns were solicited and, if not, why not; and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owner small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3)

goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

#### 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

#### 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

#### 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (SEP 2000)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

#### 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

#### 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

#### 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Definitions. As used in this clause--

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee--

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.



Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means--

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

#### 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

#### 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans" Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date--

- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
- (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that--
- (1) The information is voluntarily provided;
- (2) The information will be kept confidential;
- (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
- (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
- (End of clause)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe

benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) **Successor Contracts.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) **Notification to Employees.** The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) **Safe and Sanitary Working Conditions.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) **Records.** (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective



bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for

the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

#### 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitute a not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an

interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

#### 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101 to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

#### 52.232-1 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

#### 52.232-7 PAYMENTS UNDER TIME AND MATERIALS AND LABOR HOUR CONTRACTS (FEB 2002)

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) Hourly rate. (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to



agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) Materials and subcontracts. (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Government will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.

(4)(i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor--

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government.

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall--

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(c) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract,

the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) Ceiling price. The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) Audit. At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(h) Interim payments. (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the \_\_\_\_\_ (Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th") day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(End of clause)

#### 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(End of clause)

#### 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to--

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

#### 52.232-11 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price

therefore have been authorized in writing by the Contracting Officer.

#### 52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

#### 52.232-25 PROMPT PAYMENT (FEB 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR  
REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or



(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

#### 52.233-1 DISPUTES. (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

#### 52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop

performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

### 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

#### 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

#### 52.243-1 CHANGES--FIXED-PRICE (AUG 1987) - ALTERNATE I (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)

(a) Definitions. As used this clause--

"Commercial item", has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

#### 52.248-1 VALUE ENGINEERING (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. "**Acquisition** savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is



completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

### CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

(Figures in percent)

Contract Type	Incentive (Voluntary)		Program Requirement (Mandatory)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	* 50	* 50	* 25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	* 50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive Contracts)	*** 25	*** 25	15	15

\* The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

\*\* Same sharing arrangement as the contract's profit or fee adjustment formula.

\*\*\* The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) Calculating net acquisition savings.

(1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

(i) Concurrent and future contract savings.

(1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

- (i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.
- (ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.
- (j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.
- (k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.
- (l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.
- (m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:
- "These data, furnished under the Value Engineering clause of contract . . . . . , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."
- If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)
- (End of clause)

#### 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

- (a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--
- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
  - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or
  - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).
- (2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- (b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-  
CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.



(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

#### 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(d) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

#### 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

#### 252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(NOV 2001)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.

(End of clause)

## 252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit

purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

#### 252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

#### 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

#### 252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS  
SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institutions*, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter,

the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

## 252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (MAR 1998)

### (a) Definitions.

As used in this clause--

(1) Components means those articles, materials, and supplies directly incorporated into end products.

(2) Domestic end product means--

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind--

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) Nonqualifying country end product means an end product that is neither a domestic end product nor a qualifying country end product.

(5) Qualifying country means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(6) Qualifying country component means an item mined, produced, or manufactured in a qualifying country.

(7) Qualifying country end product means--

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

#### 252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

#### 252.225-7009 DUTY-FREE ENTRY--QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (AUG 2000)

(a) Definitions. Qualifying country and qualifying country end products have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act--Trade Agreements--Balance of Payments Program clause, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed--

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for--

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

(d) The Contractor warrants that--

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e)The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f)All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall--

(1)Consign the shipments to the appropriate--

(i)Military department in care of the Contractor, including the Contractor's delivery address; or

(ii)Military installation; and

(2)Include the following information--

(i)Prime contract number, and delivery order if applicable;

(ii)Number of the subcontract/purchase order for foreign supplies if applicable;

(iii)Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York, 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCM New York, for execution of the duty-free certificate

(v)Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi)Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A

(g) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry

(h)The contractor agrees--



(1)To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2)To consign the shipment as specified in paragraph (f) of this clause; and

(3)To mark the exterior of all packages as follows:

(i)"UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii)The activity address number of the contract administration office actually administering the prime contract.

(i)The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain--

(1)Prime contractor's name, address, and CAGE code;

(2)Prime contract number, and delivery order number if applicable;

(3)Total dollar value of the prime contract or delivery order;

(4)Expiration date of the prime contract or delivery order;

(5)Foreign supplier's name and address;

(6)Number of the subcontract/purchase order for foreign supplies;

(7)Total dollar value of the subcontract for foreign supplies;

(8)Expiration date of the subcontract for foreign supplies;

(9)List of items purchased;

(10)An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(11)The qualifying country; and

(12)The scheduled delivery date(s).

(j)This clause does not apply to purchases of qualifying country supplies in connection with this contract if--

(1)The qualifying country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2)It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k)The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed

pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i)(1), (2), and (3) of this clause will be included in applicable subcontracts.

#### 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (AUG 2000)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico --

- (1) Food;
- (2) Clothing;
- (3) Tents, tarpaulins, or covers;
- (4) Cotton and other natural fiber products;
- (5) Woven silk or woven silk blends;
- (6) Spun silk yarn for cartridge cloth;
- (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;
- (8) Canvas products;
- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or
- (10) Any item of individual equipment (Federal supply Classification 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply --

(1) To supplies listed in FAR section 25.104(a), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(4) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--

(i) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--

(a) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

252.225-7026 REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (JUN 2000)

(a) Reporting criteria.

Reporting under this clause is required for--

(1) Offers exceeding \$10 million, if the Offeror is aware at the time the offer is submitted that it or its first-tier subcontractor intends to perform any part of the contract that exceeds \$500,000 outside the United States and Canada, if that part could be performed inside the United States or Canada;

(2) Contracts exceeding \$10 million, when any part that exceeds \$500,000 could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the information was submitted with the offer, it need not be resubmitted unless it changes; and

(3) Contracts exceeding \$500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is--

(i) The principal place of performance; and

(ii) Indicated by the Offeror's entry in the Place of Performance provision of the solicitation.

(b) Submission of reports.

(1) The Offeror shall submit reports required by paragraph (a)(1) of this clause with its offer.

(2) The Contractor shall submit reports required by paragraph (a)(2) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (b)(3) of this clause. With respect to performance by a first-tier subcontractor, this information shall be reported, to the maximum extent practicable, at least 30 days before award of the subcontract.

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—Deputy Director of Defense Procurement (Foreign Contracting) OUSD(AT&L)DP(FC) Washington, DC 20301-3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) Flowdown requirements. (1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding \$500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

(d) Information required.

(1) Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for--

(i) Subcontracts;

(ii) Purchases; and

(iii) Intracompany transfers when transfers originate in a foreign location.

(End of clause)

#### 252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions. As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concerns, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

#### 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

#### 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been

separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

-----  
(Official's Name)

-----  
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

#### 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief --

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	_____	_____

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontractors under this contract that--

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

#### 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)



Section J - List of Documents, Exhibits and Other Attachments

LIST OF ATTACHMENTS

**SAFETY CHECKLIST**

- |   |                       |
|---|-----------------------|
| 1. Portable Air Compressors   | LMN 385-13-R (JAN 97) |
| 2. Crawler Tractor-Dozer  | LMN 385-15-R (JAN 97) |
| 3. Clearing, Grubbing, and Snagging   | LMN 385-17-R (JAN 97) |
| 4. Night Operations   | LMN 385-21-R (JAN 97) |
| 5. Power Bench Tools  | LMN 385-22-R (JAN 97) |
| 6. Welder – Welding Operations  | LMN 385-24-R (JAN 97) |
| 7. Portable Electric Hand Tools   | LMN 385-26-R (JAN 97) |
| 8. Tree Work, Maintenance or Removal Operations                               | LMN 385-27-R (JAN 97) |
| 9. Rubber Tired Farm Tractors, Backhoes, Front<br>End Loaders                 | LMN 385-28-R (JAN 97) |
| 10. Crawler Mounted Backhoes, Power Shovels,<br>Excavators, Front-End Loaders | LMN 385-30-R (JAN 97) |
| 11. Scrapers, Motor Graders, Heavy Hauling Units                              | LMN 385-32-R (JAN 97) |
| 12. Generators – Fixed and Portable   | LMN 385-38-R (JAN 97) |
| 13. Respirator Medical Clearance  | LMN 385-39-R (JAN 97) |
| 14. Accident Prevention Plan Checklist<br>Administrative Section              | LMN 385-7R (AUG 99)   |
| 15. Accident Prevention Program<br>Administrative Plan                        | LMN 385-43R (AUG 99)  |
| 16. Accident Prevention Program<br>Hazard Analysis                            | LMN 385-6R (AUG 99)   |
| 17. Reduction Site  |                       |
| 18. HTW containment cell  |                       |
| 19. Truck tailgate policy   |                       |
| 20. Load Ticket   |                       |

U.S. Army Engineer District, New Orleans

Contract No. or Activity

Contract No. or Activity

Witness (Signature)

NOTE: Corps of Engineers Safety and Health Requirements Manual (EM385-1-1) references are shown in parentheses.

1	Has inspection and performance test been completed. (20.A.01)
---	---

2	Have the air tanks been tested and certified? (20.A.02)
---	---

4	Does discharge from any valve create a hazard? (20.A.10)
---	--

5	Is air pressure gauge in working order? (20.A.12)
---	---

6	Is the tank equipped with a safety relief valve? (20.A.13)
---	--

7	Is equipment that is subject to whipping or rotation if released provided with an automatic shut-off? (20.A.15)
---	---

8	Are safety lashing provided at connections of tools and hose and all quick make-up connections of hose? (20.A.16)
---	--

9	Will the compressor automatically shut off before discharge pressure exceeds the maximum working pressure? (20.B.08)
---	---

10	Is the compressor located so that flammables, toxic vapors, gases, or dust will not be blown or drawn into intake? (20.B.09)
----	--

11	No valve shall be installed on the air intake pipe of a compressor with an atmospheric intake. (20.B.10)
----	--

12	Is the discharge piping from the compressor to the receiver as large as the discharge opening on the compressor? (20.B.11)
----	--

13	Is there a convenient stop valve between the air tank and each stationary piece of equipment? (20.B.12)
----	---

14	Are installation and location of air receivers as per 20.B.17?
----	--

15	Does the air tank have an accessible drain valve? (20.B.18)
----	---

16	REMARKS:
----	----------

[illegible]

LMN 385-13-R

Proponent: (CELMN-SS) JAN 97



SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>CLEARING, GRUBBING, AND SNAGGING</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Are adequate first aid kits provided? (03.A.03 and 06.D.01)			
2	Does each work group have two qualified first aid & CPR persons? (03.A.02)			
3	Where workers are exposed to water hazard, are life vests worn? (05.I.01)			
4	Is the following protective equipment provided and used when necessary? (05.A) Head   Foot   Eye   Hand   Leg chaps			
5	Have dozers and clearing equipment been provided with suitable protection for operators (canopies, grills, etc.) ? (16.B.10 and 16.B.11)			
6	Is rollover protection provided when necessary? (16.B.12)			
7	Are suitable fire extinguishers available? (16.A.26)			
8	When machines are idle, are dozier blades, crane booms, etc., lowered to the ground or deck? (16.A.09)			
9	When being fueled or serviced are the machines shut down? (16.A.08 , 14)			
10	Are operators qualified? (16.A.04)			
11	Is gasoline and other fuel stored and dispensed in a safe manner? (09.B)			
12	Are fuel tanks properly vented and identified as to contents? (09.B.01 , 12)			
13	Do fuel tanks above ground have UL listed auto-closing valve without a latch-open device? (09>b.29 (a) )			
14	Is gasoline for power saws transported in safety cans or approved containers? (09.B.12)			
15	Where floating cranes or draglines are used in snagging, is the barge of sufficient size so as to be comparatively stable during operations? (16.F.03)			
16	Are lists of standard hand signals and load rating plates posted in view of the operator? (8.B.02 and 16.C.01) <b>NOTE:</b> All test & requirements for cranes, derricks, draglines are applicable.			
17	On barge-mounted cranes not secured to the deck, has the C.O.R. authorized a travel limit or barrier to prevent overtopping or instability? (16.F.06 and 16.A.20)			
18	Is safe access provided? (16.B.03 (e) and 26.B.01) <b>NOTE:</b> Riding on hooks, buckets, etc., is prohibited. (16.C.04)			
19	Is a properly equipped life boat available for operations over or near water? (05.J.01)			
20	Have power saws, hand axes, brush blades been inspected for safe operating condition and use? (13.A.02) <b>NOTE:</b> Unsafe tools shall be removed from service.			
21	Are moving parts and lines adequately guarded? (15.A.03 and 16.B.03)			
22	When burning is necessary on clearing contracts, are the prohibitions and requirements listed below followed: a. Approved by the Government representative. (09.A.13 (a) ) b. Contact with proper authorities? (09.B.13) c. No burning during periods of high fire hazard. (09.A.13 (b) ) d. Sufficient equipment & men available for fire control. (09.A.13 (c) ) e. No flammable liquid with flash point below 100 F shall be used to kindle fires. (09.B.06)			
23	Are crane operators qualified and has the required training been done? (16.C.04)			

SAFETY INSPECTION FOR CONSTRUCTION ACTIVITY U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
NIGHT OPERATIONS NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.		Yes	No	N/A
1	General			
a	On construction contracts, is there a designated Contractor's representative on duty during night operations? FAR Clause			
b	Are weekly safety meetings being held for night-shift employees, by field supervisors or foremen? (01.B.03)(A)(B)			
c	Are regularly scheduled safety meetings being held (at least once a month) for night supervisors? (01.B.03 (a)			
d	Are there adequate communications and/or transportation available in the event of serious injury to personnel? (03.A.01)			
e	Is there two qualified first-aid and CPR attendant per shift on duty? (03.A.02)(a)			
f	Are fire, man-overboard & abandon-ship drills (as applicable) conducted at least monthly? (10.A.04 (d) ) NOTE: These drills should first be conducted on the very first night shift?			
2	Lighting - Section 7 at Table 7-1			
a	Are haul roads properly marked for night work? (Section 7, Table 7-1)			
b	Is there adequate lighting in work areas, On decks and walkways? (07.A)			
c	Is there adequate lighting at crew boat loading area on floating plant? (07.A)			
d	Are all vehicles, construction equipment properly lighted? (16.A.11) (16.A.07)(b)			
3	Transportation to and from float plant			
a	Is boat equipped with sufficient number of life preservers? (05.I.01)(a,b,c,d,e)			
b	Are all vehicles and construction equipment properly lighted for night work? (18.A.02)			
c	If boat is less than 26 feet in length, has it been tested for flotation and stability, or does it carry BIA certification? (19.A.01)			
d	If more than 6 passengers are carried, or boat is greater than 26 feet in length, is vessel Coast Guard certified and operator licensed? (19.A.02)			
e	For boats of less than 26 feet in length, is operator experienced, and his name posted as a designated small boat operator? (19.A.02) (19.C.01)(c)			
f	Is weather deck of boat coated with non-skid material? (19.B.01)(b)			
g	Is there safe, easy access from boat to landing? (19.B.02)			
h	Do guard rails meet requirements of EM 385-1-1? (19.B.02)(c)			
i	Is the capacity of boat posted in accordance with EM 385-1-1? (19.C.02)(a)			
Remarks				

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>POWER BENCH TOOLS</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Is eye, foot and other protective equipment, as needed, provided and use enforced? (05.B.01)			
2	Are adequate warning signs displayed? (08.A.01)			
3	Is the equipment always shutdown for adjustments and/or maintenance? (11.A.02)(a)(b)			
4	Is the power switch located so as to prevent accidental starting? (11.B.03)(b)			
5	Can the power be cut off without the operator having to leave his position? (13.C.01)			
6	Are the circular rip saws equipped with guards that automatically and completely enclose the cutting edges, anti-kickback devices, and splitters? (13.C.01 (a)			
7	Are electric powered tools properly grounded? (11.C.01 (b) )			
8	Is a copy of manufacturer's instructions and recommendations maintained with the tool? (13.A.02 (a)			
9	Have the tools been inspected and tested prior to use? (13.A.02)(a)(b)			
10	Are the moving parts (shafts, beltdrives, spindles, etc.) safely guarded from accidental contact? (13.A.03)(b)			
11	Is personal protective equipment provided as outlines in section 6? (13.A.13)			
12	Are tool rests on power grinders more than distance from the wheel? (13.B.05)			
13	Are damaged grinding wheels, etc. in use? (13.B.06) <b>NOTE</b> -Violation -destroy defective parts.			
14	Are planer and jointer blades fully guarded? (13.C.01)(c)			
15	Are band saws fully enclosed except for blade at point of operation? (13.C.01 (d)			
16	Are radial arm power saws equipped with an automatic brake? (13.C.04)			
17	Is a limit stop provided to prevent leading edge of radial and swing saws from traveling beyond the edge of the table? (13.C.06)			
18	Is a block, pushstick or other safe means provided for operations near cutting edges? (13.C.08 (b) )			
19	Are brushes provided for removal of sawdust, chips, etc.? (13.C.08 (d)			
20	Are lathes, metal saws, drills, etc. left unattended while still running? (13.C.08 (e) <b>NOTE</b> : This could occur when working with heavy steel plates or large shafts. If so, this is a violation.			
21	Is good housekeeping practiced? (14.C and 14.D.01)			
REMARKS:				

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>WELDER - WELDING OPERATIONS</b> NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.		Yes	No	N/A
1	Does the welding unit have a compatible fire extinguisher? (10.C.01)			
2	When welding operations are near combustible materials, has written authorization been given by designated authority. (10.C.03 (c) )			
3	Is the welding equipment inspected daily? (10.A.02)			
4	Are combustible materials screened from slag, heat and sparks? (10.C.02)			
5	Are workers and the public shielded from rays, flashes, sparks, molten metal and slag? (10.A.04)			
6	Are passageways, ladders, steps, etc. kept clear of hoses or cables? (10.A.05)			
7	Is the electric welding unit shutdown when leads are unattended? (10.E.11)			
8	Are non-current carrying parts of electric powered welders grounded? (10.E.04)			
9	Are splices, repaired insulation, etc., within 10 feet. of the rod holder? <b>THIS IS A VIOLATION.</b> Check for broken insulation--exposed wires. (10.E.03 (b) )			
10	Are leads found in contact with metal parts supporting suspended scaffolds? <b>THIS IS A VIOLATION.</b> (10.E.09)			
11	Are leads placed near high tension wires? <b>THIS IS A VIOLATION.</b> (10.E.08)			
12	Are all torch valves and gas supply shut off when work is suspended? (10.D.05)			
13	When work is suspended; are hoses, torch, etc., removed from confined spaces? (10.D.06)			
14	When stored, in transit, or regulator is not in place; is the valve protected with cap? (20.D.07 (a) & (b) )			
15	Are all compressed gas cylinders kept upright at all times, except when being hoisted? (20.D.10)			
16	Are upright cylinders secured against falling (20.D.08 & 20.D.10)			
17	Is the valve wrench or wheel in operating position when cylinder is in use? (20.D.11)			
18	Are cylinders stored in well ventilated locations? (20.D.03)			
19	Are oxygen cylinders in storage and fuel gases separated by a fire resistive wall or by a distance of 20 feet? (20.D.03 (d) )			
20	Is oxygen used to blow dust out of clothes, hair, or to cool off with? <b>THIS IS A VIOLATION.</b> (20.B.05 (a) and 20.D.18)			
21	Are "No Smoking" signs posted around cylinder storage area? (20.D.03 (e) and 20.D.04)			
22	Is the pressure on the working side of the acetylene regulator greater than 15 psig? <b>THIS IS A VIOLATION.</b> (10.D.12)			
23	Are proper measures being taken for fire control? (10.C.03)			
24	Are compressed gas cylinders separated from flammable or combustible material by at least 40 feet? (20.D.03 (c) )			
25	Is all oxygen-fuel gas cutting or welding equipped with reverse-flow check valves between torch & hoses? (10.D.07 (b) )			
26	Is personal protective equipment appropriate for the hazards encountered? (10.A.09)			
27	Are all pressure gauges and regulators in proper working order? (20.D.19)			
28	Is a pressure gauge provided on all pressurized equipment and systems? (20.A.12)			



SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>PORTABLE ELECTRIC HAND TOOLS</b> NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.		Yes	No	N/A
1 Is personal protective equipment provided for eyes, hands, etc., and their use enforced? (05.A)				
2 Are flexible cords approved for that location? (11.A.03)				
3 Are flexible cords in continuous lengths without splices? (11.A.03 (c) )				
4 Are portable and semi-portable electrical tools and equipment grounded by multiconductor cord and receptacle? (11.C.01 (b) )				
5 Are tools grounded with multi-contact plug and receptacle? (11.C.01 (b) )				
6 Are GFCI provided in all circuits using portable electric tools? (11.C.05)(a)(b)				
7 Are power hand tools inspected and tested? (13.A.02 (b) )				
8 Are tools designed to accommodate guards supplied with them? (13.A.03)(a)				
9 When overhead work is being done, are means provided to prevent tools from falling? (13.A.04)				
10 Are only nonsparking tools used in locations where sources of ignition may cause a fire or explosion? (13.A.06)				
11 Safety guards shall be provided for all machines using an abrasive wheel. (13.B.01)				
12 Has a ring test been done on abrasive wheels before mounting? (13.B.06)				
13 Are circular saws equipped with guards that automatically enclose the blade? (13.C.01)				
REMARKS:				

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>TREE WORK, MAINTENANCE OR REMOVAL OPERATIONS</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Are all chain saws in sound mechanical condition? (31.A.04)			
2	Are saws started more than 10 feet from fuel containers? (13.F.04)			
3	Are saws fueled while running or hot or near open flame? (13.F.04)			
4	Is eye, ear, hand, foot, or leg protection provided? (13.F.03)			
5	Is the chain saw used to cut above shoulder height? (13.F.06)			
6	Has the area been cleared of brush, felled trees, etc. prior to cutting? (13.D.01)			
7	Do all chain saws have an automatic chain brake or kickback device? (13.F.01)			
8	Is tree removal, trimming, or repair under the supervision of a qualified tree worker? (31.A.01)			
9	Are tree workers wearing saddles, safety belts, safety straps and/or lanyards? (31.B.02)			
10	Are tree workers carrying tools in their hands while climbing? (31.B.07)			
11	Are brush chippers operated and maintained in accordance with manufacturer's recommendations? (31.D.03)			
12	Are climber spurs of the tree climbing type? (31.B.01 (a) )			
13	Are pole pruners, pole saws, and other similar tools equipped with wood or nonmetallic handles? (31.E.01 (a) )			
REMARKS:				

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>RUBBER TIRED FARM TRACTORS, BACKHOES, FRONT END LOADERS</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Is protection (grills, canopies, screens) provided to shield operator from falling or flying objects? (16.B.10 and 16.B.11)			
2	Is adequate roll-over protection provided? (16.B.12)			
3	Are seat belts provided? (16.B.08)			
4	Are only designated qualified operators being assigned to operate mechanized equipment? (16.A.04)			
5	Does the unit have a suitable fire extinguisher? 5 BC (16.A.26)			
6	Is there an effective , working, reverse alarm? (16.B.01)			
7	Are moving parts, shafts, sprockets, belts, etc., guarded? (16.B.03 (a) and 16.B.07 and 16.B.13)			
8	Is protection against contact with hot surfaces, exhaust, etc., provided? (16.B.03 (6) )			
9	Are all screens, guards, shields in place and effective? (16.B.03)			
10	Is a safe means of access to the cab provided (steps, grab bars, non-slip surfaces)? (16.B.03 (d) )			
11	Are pressurized cylinders, outriggers, etc., equipped with a pilot check valve? (20.A.17)			
12	Are sufficient lights provided for night operators? (16.A.11)			
13	Are there initial inspections and scheduled inspections of the equipment at regular intervals? (16.A.02 (a) and (b) )			
14	Are fuel tanks located in a manner to prevent spills or overflows from running onto engine exhaust or electrical equipment? (16.B.04)			
15	Are exhaust discharges from equipment so directed that they do not endanger persons or obstruct the view of the operator? (16.B.05)			
16	Has the equipment been inspected and tested by a competent person? (16.A.01)			
17	Are inspection records kept available as a part of the official project file? (16.A.01 (b) )			
Remarks:				

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>CRAWLER MOUNTED BACKHOES, POWER SHOVELS, EXCAVATORS, FRONT-END LOADERS</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Is the unit equipped with a suitable fire extinguisher (5BC)? (16.A.26)			
2	Is a safe means of access to the cab provided (steps, grab bars, non-slip surfaces)? (16.B.03 (d) )			
3	Is the operator protected against weather, falling or flying objects? (16.B.10 and 16.B.11)			
4	Are seat belts and adequate rollover protection provided where applicable? (16.B.08 & 16.B.12)			
5	Are sufficient lights provided for night operations? (16.A.11)			
6	Have brakes been tested and found satisfactory? (16.A.07 (d) )			
7	Does the unit have an emergency brake system? (16.A.07 (d) )			
8	Can the emergency system be activated from cab? (16.A.07 (d) )			
9	Have air tanks been tested and certified? (20.A.01 (b) (c)			
10	Is an air pressure gage in working condition installed on the unit? (20.A.12)			
11	Does the air tank have an accessible drain valve? (20.B.18)			
12	Are the units equipped with windshield wipers, defrosting and defogging equipment that are in good operating condition? (16.A.07)(c)			
13	Is there an effective reverse signal where applicable? (16.B.01)			
14	Has the unit been inspected and certified mechanically safe by a qualified person before being placed in use? (16.A.01)			
15	Is the record of the test available? (16.A.01 (b) )			
16	Are pressurized cylinders, actuating booms, outriggers, etc., equipped with pilot check valves? (20.A.17)			
17	Are only designated qualified operators being assigned to operate mechanized equipment? (16.A.04)			
18	Are fuel tanks located in a manner to prevent spills or overflows from running onto engine, exhaust, or electrical equipment? (16.B.04)			
19	Are exhaust discharges from equipment so directed that they do not endanger persons or obstruct the view of the operator? (16.B.05)			
REMARKS:				

LIST OF ATTACHMENTS

SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>SCRAPERS, MOTOR GRADERS, HEAVY HAULING UNITS</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Is the unit equipped with a suitable fire extinguisher (5 BC)? (16.A.26)			
2	Is a safe means of access to the cab provided (steps, grab bars, non-slip surfaces)? (16.B.03 (d) )			
3	Is the operator protected against weather, falling or flying objects? (16.B.10 and 16.B.11)			
4	Are seat belts and adequate rollover protection provided where applicable? (16.B.08 & 16.B.12)			
5	Are adequate head and tail lights provided? (16.A.07 (b) )			
6	Have brakes been tested and found satisfactory? (16.A.07 (d) )			
7	Does the unit have an emergency brake system? (16.A.07 (d) )			
8	Can the emergency system be activated from cab? (16.A.07 (d) )			
9	Does the emergency brake work automatically when regular brakes fail? (16.A.07 (d) )			
10	Have air tanks been tested and certified? (20.A.01 (b) )			
11	Is an air pressure gage in working condition installed on the unit? (20.A.12)			
12	Does the air tank have an accessible drain valve? (20.B.17)			
13	Are the units equipped with windshield wipers, defrosting and defogging equipment that are in good operating condition? (16.A.07)			
14	Is there an effective reverse signal where applicable? (16.B.01)			
15	Has the unit been inspected and certified mechanically safe by a qualified person before being placed in use? (16.A.01)			
16	Is the record of the test available? (16.A.01 (b) )			
17	Is the unit shut down for servicing, fueling, etc.? (16.A.14)			
18	Are only designated qualified operators being assigned to operate mechanized equipment? (16.A.04)			
19	Are fuel tanks located in a manner to prevent spills or overflows from running onto engine, exhaust or electrical equipment? (16.B.04)			
20	Are exhaust discharges from equipment so directed that they do not endanger persons or obstruct the view of the operator? (16.B.05)			
21	Are seats provided for each person required to ride on equipment? (16.A.07 (a) )			
REMARKS:				



SAFETY INSPECTION FOR MISCELLANEOUS EQUIPMENT U.S. Army Engineer District, New Orleans		Date of Inspection:		
Contractor or Unit		Contract No. or Activity		
Inspected by (Signature)		Witness (Signature)		
<b>GENERATORS - FIXED AND PORTABLE</b>		Yes	No	N/A
NOTE: Safety and Health Requirements Manual (EM385-1-1) references in parentheses.				
1	Is the temporary wiring guarded, isolated by elevation, or buried so as to prevent accidental contact? (11.A.02)			
2	Are extension cords of the type listed by Underwriters Laboratories, Inc., for the purpose in which they are used? (11.A.03) See Table 11-1			
3	Are all switch boxes, receptacle boxes, metal cabinets, and temporary power lines marked to indicate the maximum operating voltage? (11.A.06)			
4	Are all circuits protected against overload? (11.B.01)			
5	Are disconnect boxes securely fastened to a surface and fitted with a cover? (11.B.02 (b))			
6	Does each fuse cabinet have close fitting doors that can be locked? (11.B.01 (e))			
7	Are all circuit breakers, switches, and fuses marked or labeled identifying the circuits or equipment supplied through them? (11.B.04)			
8	Are all switches, circuits breakers, fuse panels, or motor controllers that are located out-of-doors or in wet locations in a weatherproof enclosure or cabinet? (11.B.05)			
9	Are all circuits grounded? In accordance with the NEC (11.C.01)			
10	Has a sketch been submitted and accepted for the proposed temporary power distribution system? (11.D.01)			
11	Is the vertical clearance above walkways 10-15 ft or more for circuits carrying 600 volts or less? (11.D.03) See Table			
12	Are all wires insulated from their supports? (11.D.05)			
13	Are records of operational checks available? (16.A.01 (b) )			
14	Is the unit shut down for servicing, fueling, etc? (16.A.14)			
15	Is the unit equipped with a suitable fire extinguisher (5 BC)? (16.A.26)			
16	Are exhaust systems protected from contact? (16.B.03 (b) )			
17	Are fuel tanks located in a manner to prevent spills or overflows from running onto engine, exhaust, or electrical equipment? (16.B.04)			
18	Are exhaust discharges from equipment so directed that they do not endanger persons from exhaust fumes? (16.B.05)			
REMARKS				

U.S. ARMY CORPS OF ENGINEERS - NEW ORLEANS DISTRICT RESPIRATOR MEDICAL CLEARANCE			
Name:		Date of Birth:	
Crew:		Office Symbol:	
PART I - TO BE FILLED OUT BY SUPERVISOR			
A. CHECK TYPE OR TYPES OF RESPIRATOR(S) TO BE USED:			
	Half-face Air-purifying cartridge		Full-face cartridge
	Full-face Powered Air-supply		Self-contained (Scott Air)
B. LEVEL OF WORK EFFORT (CHECK ONE):			
	Light		Moderate
	Heavy		Strenuous
C. Extent of Usage:			
	Daily		Weekly, average number hours per week
	Rarely -- or for emergency situations only		
D. SPECIAL WORK CONSIDERATIONS (CHECK ALL THAT APPLY):			
	High Places		Protective Clothing
	Elevated Temperatures		Confined Spaces
	Hazardous Material		Other (Specify)
	Approximate weight of respirator equipment (pounds)		
Supervisor's Signature			

PART II - TO BE FILLED OUT BY EMPLOYEE			
Have you had, or do you now have any of the following	No	Yes	Examiner's Comments
Used a half-face respirator			
History of fainting spells or unconsciousness			
High blood pressure			
Fear of tight or enclosed places			
Sensation of smothering			
Dizziness			
Heat exhaustion or stroke			



Ruptured ear drum			
Contact lenses or glasses			
Dentures			
Facial scars which would restrict the fitting and or wearing of a respirator			
If you have any other problems which you feel might interfere with your ability to wear a respirator, please enter them here and mention them to the examiner.			Employee's Signature and date

PART III - TO BE FILLED OUT BY EXAMINER	
A. I HAVE REVIEWED THE FOLLOWING INFORMATION:	
	Review of Medical Examination performed on _____ (date); copy attached
	Review of Respirator Medical and other pertinent history questionnaires
	FEOH Laboratory Profile (where clinically indicated)
	Pulmonary Function Test (FVC and FEV 1)
	Other tests performed and reviewed
B.	I CERTIFY THAT, BASED ON THIS REVIEW, THE EMPLOYEE IS CLASSIFIED IN THE FOLLOWING REPIRATOR CATEGORY:
	No restrictions on respirator use
	Some specific-use restrictions
	No respirator use permitted
Restrictions:	
Examiner:	
Date:	

**ACCIDENT PREVENTION PLAN CHECKLIST  
ADMINISTRATIVE SECTION**

<b>LOCATION:</b>	<b>DATE:</b>		
<b>CONTRACT:</b>	<b>SIGNATURE:</b>		
<b>Please check and submit copies of the following items that are applicable.</b>	<b>YES</b>	<b>NO</b>	<b>REMARK</b>
1     Statement of safety and health policy			
2     Identification & accountability of personnel responsible for accident prevention			
3     Means for coordinating and controlling work activities of contractors, subcontractors, and suppliers.			
4     Responsibilities of subcontractors in effecting the requirements of the accident prevention plan			
5     Plans for safety indoctrination and continued safety training			
6     Provisions for frequent safety inspections of work sites, material, & equipment to ensure compliance with accident prevention plan and safety manual			
7     Means of recording (in inspection reports) identified safety and health deficiencies.			
8     Measures, timetable and INDIVIDUAL responsible for correction of deficiencies listed above.			
9     Procedures for follow-up inspections to ensure correction of deficiencies			
10    Responsibility for investigating and reporting accidents; reporting exposure			
11    Responsibility for maintaining accident and exposure data, reports, and logs			
12    Emergency response capabilities to minimize the consequences of accidents or natural disaster			
13    Contingency plans for severe weather, e.g., windstorms, flooding, tornadoes, marine storms, etc.			
14    Plans for maintaining job cleanup and safe access			
15    Public safety requirements (e.g., fencing, signs)			
16    Local requirements which must be addressed			
17    Prevention of alcohol and drug abuse on the job			
18    Plans for a hazard communication program			
19    Written program for the control of hazardous energy (Lockout/Tagout)			
20    Dive plans submitted to safety.			
21    List of trained/designated equipment operators.			
22    Copy of annual crane/derrick certification and a list of licensed crane operators.			
23    Written safety plans for the pit and dumping areas.			
24    Remarks:			

1. Contractor		2. Contract Name & No.		3. Date	
4. Project Superintendent		5. Shift/day	5a. Hours/shift	5b. Maximum employees/shift	
6a. TRAINING - List subjects to be discussed with employees in safety indoctrination.					
6b. TRAINING - List mandatory training and certifications which are applicable to this project (e.g., explosive actuated tools, confined space entry, operator, diver, vehicle operator, etc.)					
7. Responsibility & Authority - Who is responsible for safety?					
Project:		Corporate:		Line of Authority?	
8. Who will conduct safety inspection?		8a. How		8b. When	
9a. Is safety & health policy attached?		9b. Is safety program attached?		9c. Day & hour weekly safety meeting	
10. How will subcontractor & supplies be controlled?		11. What are their safety responsibilities?			
12. Who will report accidents, exposure data?					
13. MEDICAL SUPPORT. Outline on-site medical support and off-site medical arrangements.					

[illegible]

LMN385-43R

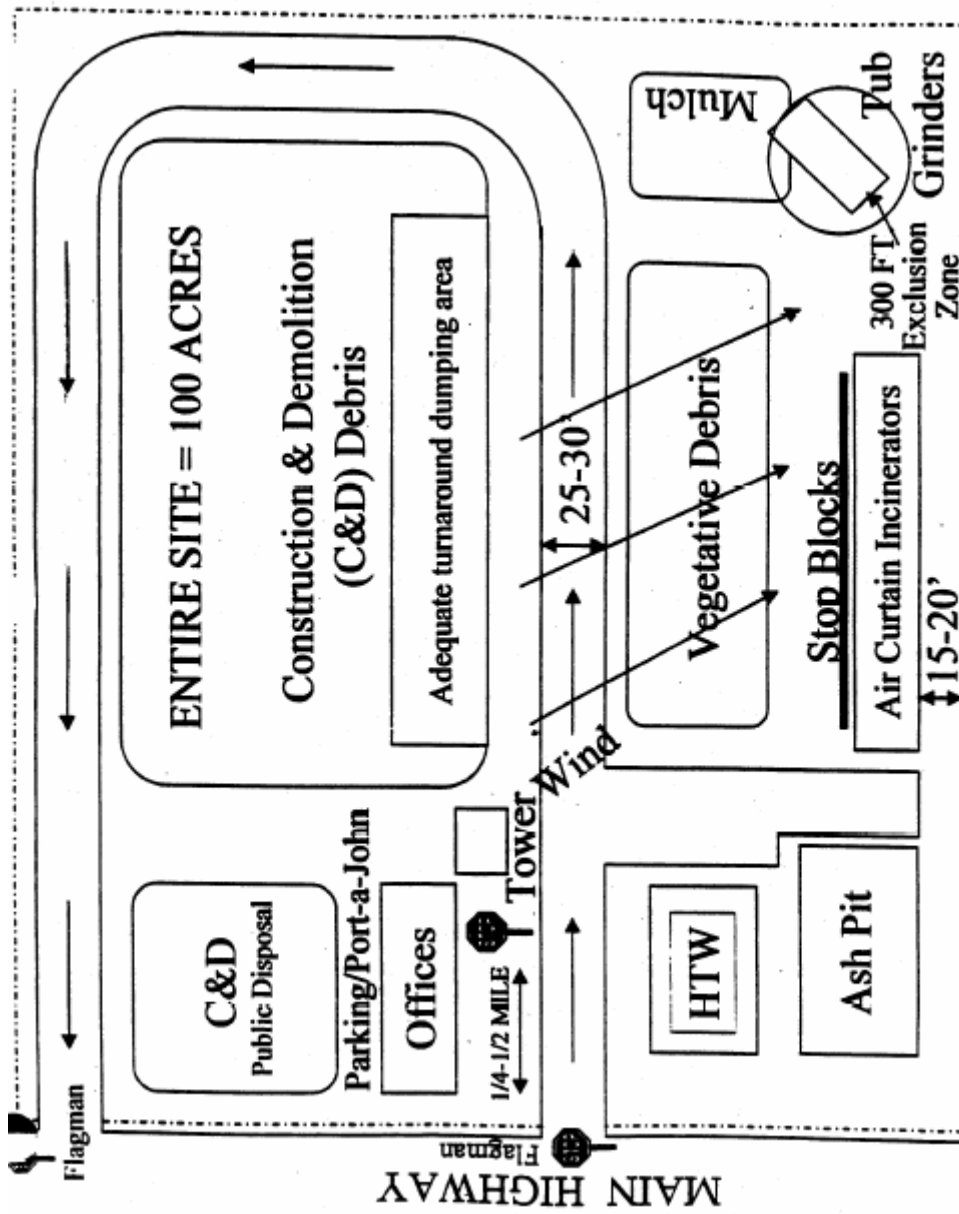
CEMVN-SS Aug 99

<b>ACCIDENT PREVENTION PROGRAM</b> <b>HAZARD ANALYSIS</b>		
1. Contract No.	2. Project	3. Facility
4. Date	5. Location	6. Estimated St
7. PRINCIPAL STEPS	8. POTENTIAL HAZARDS	
10. EQUIPMENT TO BE USED	11. INSPECTION REQUIREMENTS	
13. Contractor Signature and Date		
14. Report discussed with contractor/superintendent on _____		

LMN 385-6R  
99

Proponent CEMVN-SS Aug

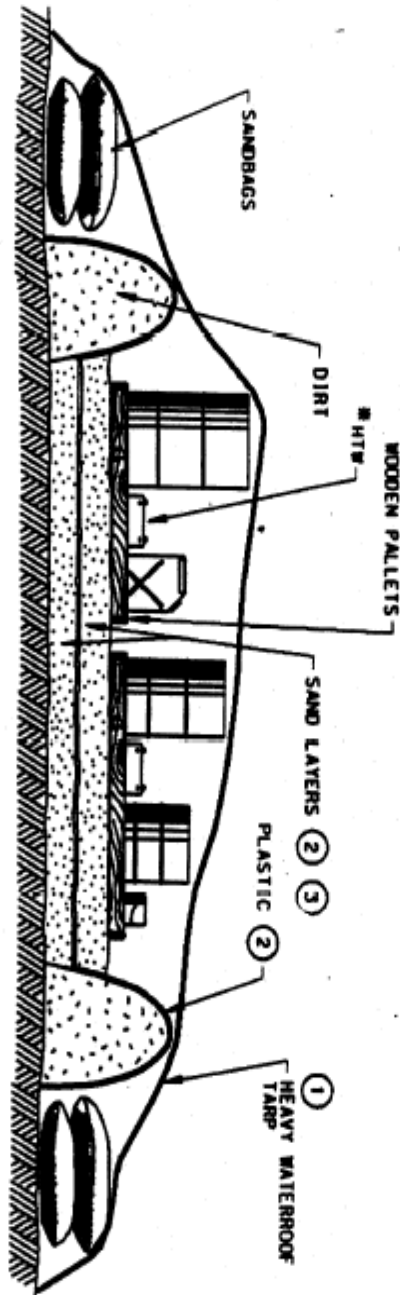
LIST OF ATTACHMENTS



\* HTW INCLUDES: PAINT, SOLVENTS, POL (PETROLEUM, OIL & LUBRICANTS), BATTERIES, ANT-FREEZE, PROPANE TANKS, ASPHALTS

NOTES:

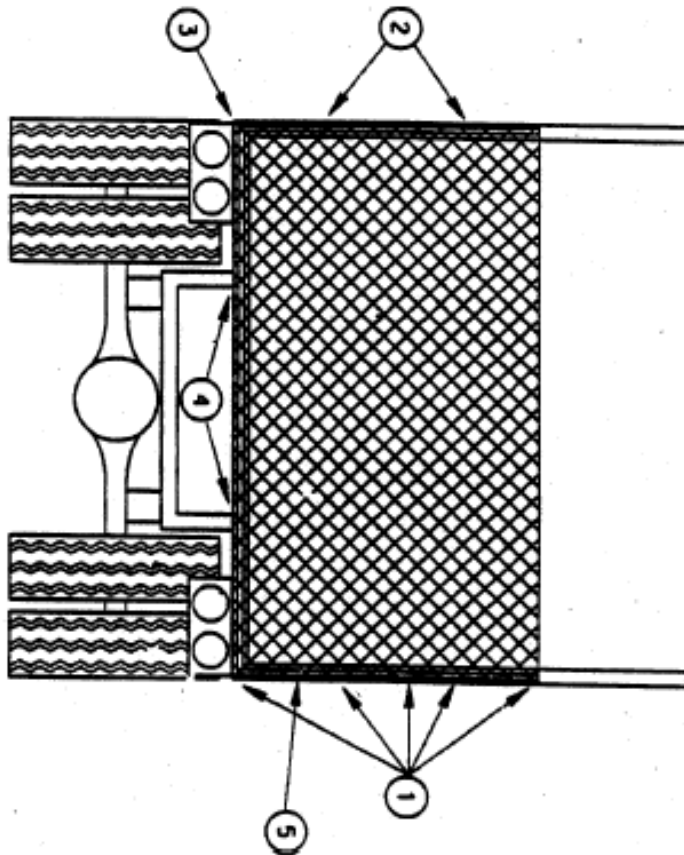
- ① CONTAINMENT CELL MUST BE COVERED AT ALL TIMES
- ② PLASTIC IS SANDWICHED BETWEEN LAYERS TO PREVENT PLASTIC FROM TEARING
- ③ CONTAMINATED SAND SHALL BE PROPERLY CONTAINED & DISPOSED OF AS HAZARDOUS WASTE



FIELD EXPEDIENT HTW CONTAINMENT CELL


WINDMATE 1 NOV. 98





### TAILGATE FENCING

- ① ATTACH FENCING PERMANENTLY TO ONE SIDE OF TRUCK BED
- ② AFTER LOADING, TIE FENCING TO OTHER SIDE OF TRUCK BED AT TWO PLACES WITH HEAVY GAGE WIRE
- ③ FENCING MUST EXTEND TO BOTTOM OF BED
- ④ AFTER LOADING, BOTTOM OF FENCING SHALL BE TIGHT AGAINST THE BED OF THE TRUCK AND SECURED AT A MINIMUM OF TWO LOCATIONS
- ⑤ USE SOLID IRON METAL BARS ON TWO SIDES OF THE FENCING

LOAD TICKET		
TICKET NUMBER:		
CONTRACT NUMBER		
CONTRACTOR		
DATE:		
DEBRIS QUANTITY		
Truck No:	Capacity (CY):	
Load Size (CY):	Tons:	
Truck Driver:		
DEBRIS CLASSIFICATION		
	Burnable	
	Non-Burnable	
	Mired	
	Other	
LOCATION		
Section/Area:	Dumpsite	
	Time	Inspector
Loading		
Dumping		
 <p>US Army Corps of Engineers</p> <p>Original: Corps of Engineers Yellow: Contractor Pink: Driver Gold: Sub-Contractor</p>		